Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act[5] and for the reasons stated above, the Commission designates September 21, 2015, as the date by which the Commission should either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–Phlx–2015–49).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19136 Filed 8–4–15; 8:45 am]

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[5] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75554; File No. SR–NSX–2015–04]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Exchange Rule 11.21, Short Sales, To Describe the Exchange's Implementation of Rule 201 of Regulation SHO Under the Securities Exchange Act of 1934 and Relocate Certain Text From Rule 11.11, Orders and Modifiers; and Amending Rule 13.2 To Incorporate by Reference Rules 200, 203 and 204 of Regulation SHO

July 30, 2015.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2015, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change, as described in Items I, II, and III 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.

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

The Exchange is proposing to amend Exchange Rule 11.21, Short Sales, in order to describe the manner in which the Exchange's trading system (the ''System'')[3] handles sell short orders under the provisions of Rule 201 of Regulation SHO (''Rule 201'') pursuant to the Act.[4] The Exchange also proposes to relocate to Rule 11.21 certain short sale-related rule text currently in Rule 11.1, Orders and Modifiers, and to amend Rule 13.2, Failure to Deliver and Failure to Receive, to delete the existing text and incorporate by reference Rules 200, 203 and 204 of Regulation SHO.[5] The Exchange has designated this rule proposal as ''non-controversial'' pursuant to Section 19(b)(3)(A) of the Act[6] and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[7]

The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com,* at the Exchange's principal office, and at the Commission's public reference room.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the rule changes proposed by the Exchange is to provide transparency for Exchange Equity Trading Permit (''ETP'') Holders,[8] their customers, and the investing public into the operation of the System in accordance with Rule 201.[9] The proposed rule amendments will: (i) Consolidate the Exchange's short sale rules into a single rule set and make amendments that will further enhance the transparency of the Exchange's rules; (ii) clarify the System's operation regarding the handling of a ''resting'' sell short Market Peg Zero Display Reserve Order under Rule 201;[10] (iii) specify the obligations of ETP Holders with respect to marking sell short orders entered into the System; and (iv) amend Rule 13.2, Failure to Deliver and Failure to Receive, to delete the existing text and incorporate by reference Rules 200, 203 and 204 of Regulation SHO pursuant to the Act.[11]

Rule 201(b)(1)(i) requires that trading centers such as the Exchange establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from such security's closing price on the listing market at the close of regular trading hours on the prior day (the ''Short Sale Price Test''). Rule 201(b)(1)(ii) 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 trading day and the following day, when a national best bid for the security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan (the ''Short Sale Price Test Period'').[12]

Rule 201(b)(1)(iii)(A)[13] provides that a trading center's written policies and procedures must be reasonably designed to permit the execution of a displayed short sale order of a covered security

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5, Definitions, defines the ''System'' as ''. . . the electronic securities communications and trading facility . . . through which orders of Users are consolidated for ranking and execution.''

[4] 17 CFR 242.201. *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (''Rule 201 Adopting Release'') and Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010). *See also* Division of Trading and Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, January 20, 2011, at *http://www.sec.gov/divisions/marketreg/mrfaqregsho1204.htm* (''Rule 201 FAQs'').

[5] 17 CFR 242.200, 17 CFR 242.203 and 17 CFR 242.204.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] As defined in Exchange Rule 1.5, the term ''ETP'' refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's facilities.

[9] Pursuant to *Interpretations and Policies .01* (Cessation of Trading Operations on NSX) under Exchange Rule 11.1 (Hours of Trading), the Exchange ceased operating its marketplace for the trading of equity securities as of the close of business on May 30, 2014. *See* Securities Exchange Act Release No. 72107 (May 6, 2014), 79 FR 27017 (May 12, 2014) (SR–NSX–2014–14). The Exchange is filing this proposed rule change in anticipation of the resumption of trading activity on the System, after all necessary regulatory approvals have been obtained.

[10] Exchange Rule 11.11(c)(2)(A) defines a Zero Display Reserve Order as a Reserve Order with a Zero Display Quantity and a Market Peg Zero Display Reserve Order as a pegged Zero Display Order that tracks the inside quote on the opposite side of the market.

[11] *See* footnote 5, *supra.*

[12] 17 CFR 242.201(b)(1).

[13] 17 CFR 242.201(b)(1)(iii)(A).

during the Short Sale Price Test Period if, at the time of initial display of the short sale order, the order was at a price above the current national best bid. Further, Rule 201(b)(1)(iii)(B) requires that such policies and procedures must be reasonably designed to permit the execution of a short sale order of a covered security marked ''short exempt'' during the Short Sale Price Test Period without regard to whether the order is at a price that is less than or equal to the current national best bid.

Amendments of Exchange Rule 11.21

The Exchange states that, consistent with its obligations as a trading center under Rule 201, it implemented, maintains and enforces written policies and procedures and System functionality reasonably designed to prevent the execution or display of a sell short order of a covered security subject to the Short Sale Price Test at a price equal to or below the current national best bid. The Exchange's written policies and procedures and the System functionality are also reasonably designed to: (i) Permit the execution of a displayed short sale order in a covered security that would otherwise be subject to the Short Sale Price Test if, at the time of initial display of the short sale order, the order was at a price above the current national best bid; and (ii) permit the execution or display of a short sale order in a covered security marked ''short exempt'' without regard to whether the order is at a price that is less than or equal to the current national best bid.[14]

The Exchange is proposing to amend Rule 11.21 to add provisions regarding the operation of the System in handling short sale orders under Rule 201 in the event the Short Sale Price Test is triggered and such provisions will be part of the written policies and procedures of the Exchange. The Exchange states that it is proposing these amendments to enhance transparency in its rules and to make explicit the obligations of ETP Holders in ensuring that sell short orders entered into the System are properly marked as ''short'' or ''short exempt,'' and the Exchange's expectations in that regard.

In proposed new paragraph (a) of Rule 11.21, the Exchange defines the terms ''covered security,'' ''national best bid,'' and ''listing market'' for purposes of Rule 11.21 as having the same meaning as the corresponding definitional section of Rule 201 [15] and applies the definitions with respect to all of the proposed changes to Rule 11.21.

In proposed new paragraph (b) of Rule 11.21, the Exchange explicitly states that ETP Holders are required to mark sell orders entered into the System as ''long,'' ''short,'' or ''short exempt'' as required by Rule 200(g) of Regulation SHO. Additionally, the Exchange makes clear in paragraph (b) that it relies on the marking of an order as ''short exempt'' when it receives such an order and it is the responsibility of the ETP Holder entering the order, and not the Exchange's responsibility, to comply with the requirements of Regulation SHO relating to the marking of orders as ''short exempt.'' The Exchange believes that, by explicitly stating these requirements as part of the proposed amendments to Rule 11.21, it will enhance the transparency and comprehensiveness of the Exchange's rules and provide ETP Holders with a clear statement of their order marking responsibilities with respect to sell short orders.

In that regard, *Interpretations and Policies* .01 of Rule 11.21, as proposed, explicitly states that NSX Securities, LLC (''NSXS''), an Exchange-affiliated broker-dealer with the sole function of acting as the outbound routing facility of the Exchange, relies on an ETP Holder's marking of an order as ''long,'' ''short'' or ''short exempt.'' [16] NSXS will route an order received by NSX marked ''short exempt'' during the Short Sale Price Test Period without independently evaluating the correctness of the ''short exempt'' marking under Regulation SHO Rules 201(c) and (d).[17]

In proposed new paragraph (c) of Rule 11.21, the Exchange states that, except as provided in subparagraphs (c)(1) and (c)(2) of the rule (which, as discussed below, pertain to the two exceptions permitting execution and display of sell short orders of a covered security during the Short Sale Price Test Period), the System will not execute, display, or route a sell short order in a covered security at a price that is less than or equal to the current national best bid if the price of that security decreases by 10 percent or more from the 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. Proposed new subparagraph (c)(1) states that the System will execute and display a short sale order during the Short Sale Price Test Period without regard to price if, at the time of initial display of the short sale order, the order was at a price above the current national best bid.

The Exchange also proposes to state in new subparagraph (c)(1) that the ''initial display'' of the short sale order includes the initial display through the facilities of a securities information processor (''SIP'') or through the Exchange's proprietary market data feed.[18] The Exchange believes that it is important to define ''initial display'' in Rule 11.21(c)(1) as including both display through the SIP and the Exchanges' proprietary market data feed so as to make explicit that the Exchange will use of both forms of display in determining whether a particular short sale order of a covered security qualifies for the exception under Rule 201(b)(1)(iii)(A).

In proposed Rule 11.21(c)(2), the Exchange states that the System will execute, display and route a short sale order marked ''short exempt'' during the Short Sale Price Test Period without regard to whether the short sale order is at a price above the national best bid.[19] Proposed Rule 11.21(d) provides that a Short Sale Price Test triggered by the listing market will remain in effect for the remainder of the trading day on which it is triggered through the close of regular trading on the next trading day, when a national best bid for the security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan.[20]

The Exchange further proposes in Rule 11.21(e) to state that, when the Short Sale Price Test is in effect with respect to a covered security, the System will evaluate all incoming sell short orders in that security that are not marked ''short exempt'' to determine whether the order can be executed or displayed at a price above the current national best bid. A sell short order in a covered security ''resting'' on the NSX

[14] 17 CFR 242.201(b)(1)(iii)(B). Rule 200(g)(2), 17 CFR 242.200(g), provides that a sell order may be marked ''short exempt'' only if the provisions of Rules 201(c) or 201(d) are met. With respect to Rule 201(d), in order to mark an order ''short exempt'' a broker or dealer must have a reasonable basis for believing that the order meets one of the exceptions specified in Rule 201(d)(1) through (d)(7). With respect to Rule 201(c), in order to mark an order ''short exempt'' the order must be entered during the Short Sale Price Test Period and meet the conditions specified in Rule 201(c). 17 CFR 242.201(d); 17 CFR 242.201(c).

[15] *See* 17 CFR 242.201(a).

[16] Under Rule 2.11, NSXS functions solely as the Exchange's outbound routing facility. NSXS is not an execution venue.

[17] *See* Reg. SHO FAQs, Question and Answer 5.3.

[18] The Exchange's proprietary market data feed, called the ''NSX Depth of Book Feed,'' was made available on a uniform basis to all ETP Holders authorized to receive the feed, as well as to any other authorized recipients. The Exchange does not anticipate making any changes to the availability of the NSX Depth of Book Feed upon the resumption of trading on the Exchange.

[19] *See* 17 CFR 242.201(b)(1)(iii)(B).

[20] *See* footnote 12, *supra.*

Book will be evaluated by the System if matched for execution during the Short Sale Price Test Period and, unless the order was initially displayed at a price above the current national best bid, will be canceled if at a price equal to or below the current national best bid. The Exchange believes that including this provision in Rule 11.21 will enhance clarity and transparency regarding the Exchange's policies, procedures, and System controls reasonably designed to comply with Rule 201.

Further to the goal of enhancing transparency in the rules regarding the operation of the System, the Exchange is also proposing in new subparagraphs (f)(1) through (f)(9) of Rule 11.21 to describe the operation of the System during the Short Sale Price Test Period with respect to specific order types that are not marked ''short exempt,'' as follows:

Market and Limit Order. A sell short market or limit order will be matched by the System for execution at a price above the current national best bid and, if a limit order, within the limit price of the sell short order. Any remaining unfilled portion will be canceled unless, in the case of a limit order, the limit price of the remaining shares is above the current national best bid; the unfilled portion of such a limit order will remain on the NSX Book but will not execute unless at a price above the current national best bid in accordance with Rule 201(b)(1) of Regulation SHO.

Odd Lot and Mixed Lot Order. A sell short odd lot order and a mixed lot order, which is an order consisting of one or more round lots combined with a number of shares constituting an odd lot,[21] will be rejected if entered at a price equal to or below the current national best bid. Odd lot orders aggregated to form a round lot and initially displayed at a price above the current national best bid, or a mixed lot order initially displayed at a price above the current national best bid, will be eligible for execution at a price equal to or below the national best bid in accordance with Rule 201(b)(1)(iii)(A) of Regulation SHO.

Immediate or Cancel (''IOC'') Order. As defined in Rule 11.11(b)(1), an IOC order is a limit order that is to be executed in whole or in part as soon as such order is received by the System and any portion not so executed is treated as canceled. A sell short IOC order will, upon entry, be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

Midpoint-Seeker Order. A Midpoint-Seeker Order, which is an IOC order that executes only against undisplayed orders priced at the midpoint of the protected bid and protected offer,[22] when marked ''sell short'' will, upon entry, be matched by the System for execution at a price above the current national best bid and any remaining unfilled portion will be canceled.

Reserve Order. A Reserve Order is defined in Rule 11.11(c)(2) as ''[a] limit order with a portion of the quantity displayed (''display quantity'') and with a reserve portion of the quantity (''reserve quantity'') that is not displayed.'' A sell short Reserve Order will be rejected by the System if it is entered at a price equal to or below the current national best bid. A sell short Reserve Order that was initially displayed at a price above the current national best bid may execute at a price equal to or below the current national best bid during a Short Sale Price Test Period, up to the full size of the order (including any reserve quantity).[23]

Post Only Order,[24] *NSX Only Order*[25] *and Destination Specific Order.*[26] Sell short orders in these order types will be rejected if entered at a price equal to or below the current national best bid.

Sweep Order, Destination Sweep Order,[27] *Intermarket Sweep (''ISO'') and Post-ISO Order.*[28] A sell short Sweep Order, Destination Sweep Order, ISO and Post-ISO will be rejected by the System if entered at a price equal to or below the current national best bid. If entered at a price above the current national best bid, such sell short orders will be accepted by the System and eligible for execution. If an ISO is marked ''IOC,'' any remaining unfilled portion will be canceled. The unfilled portion of ISO orders not marked ''IOC'' and Post-ISO orders will be entered on the NSX Book if at a price above the national best bid. A Post ISO order that was not initially displayed at a price above the national best bid will be canceled if matched by the System for execution at a price equal to or below the national best bid.

Cancel/Replacement of Orders. As proposed in new paragraph (g) of Rule 11.21, a cancel/replace request will be rejected by the System if: (i) The limit price on the replacement sell short order is equal to or below the current national best bid; or (ii) if the original limit price of the sell short order is equal to or below the current national best bid and the cancel/replace message seeks to increase the order size.[29]

To summarize, the Exchange believes that the proposed amendments to Rule 11.21 to describe with greater particularity the handling of specific order types during the Short Sale Price Test Period will further contribute to clarity and transparency in the Exchange's rules, which will operate to the benefit of ETP Holders and their customers and market participants generally.

Proposed Amendments Regarding Sell Short Market Peg Zero Display Reserve Orders

The Exchange is proposing to amend Rule 11.11, subparagraphs (c)(2)(E)(i)–(iii) regarding the System's handling of a sell short Market Peg Zero Display Reserve Order under Rule 201by relocating the provisions of those subparagraphs to Rule 11.21(f)(8)(i)–(iii), thereby consolidating the Exchange's short sale order handling rules in one rule set; and amending subparagraph (iii) to delete the provision that any unexecuted portion of a resting sell short Market Peg Zero Display order will be canceled if it is matched for execution during the Short

[21] *See* Rule 11.11(c)(3) and (c)(4).

[22] *See* Rule 11.11(c)(13).

[23] Pursuant to Rule 11.14, Priority of Orders, *Interpretations and Policies* .01, the use of a ''Replace Message'' to modify the quantity of a Reserve Order will result in a new timestamp and the order losing time priority on the NSX Book unless (i) both the display size of the Reserve Order is decreased and the total order quantity is decreased or remains the same; or (ii) both the display size of the Reserve Order remains the same and the total order quantity is decreased.

[24] Rule 11.11(c)(5) defines a Post Only Order as ''[a] limit order that is to be posted on the Exchange and not routed away to another trading center.''

[25] Rule 11.11(c)(6) defines an NSX Only Order as ''[a]n order that is to be executed on the Exchange pursuant to Rule 11.15(a) or [canceled], without routing away to another trading center.''

[26] Rule 11.11(c)(9) defines a Destination Specific Order as ''[a] market or limit order that instructs the System to route the order to a specified away trading center, after exposing the order to the NSX Book . . . .''

[27] A Sweep Order is defined in Rule 11.11(c)(7) as ''[a] limit order that instructs the System to 'sweep' the market.'' The rule provides for several types of sweep orders, specifically a ''Protected Sweep Order,'' a ''Full Sweep Order'' and a ''Destination Sweep Order.'' For purposes of System functionality during the Short Sale Price Test Period, all of such Sweep Order types are treated in the same manner.

[28] ISO is defined in Rule 600(b)(30) of Regulation NMS pursuant to the Exchange Act, 17 CFR 242.600(b)(30). Rule 11.11(c)(8)(ii) provides that an ISO order may be designated as a ''Post-ISO'' when entered into the System, and the use of such designation constitutes a representation that the entering ETP Holder has simultaneously routed one or more additional limit orders marked ''ISO'' as necessary to away markets to execute against the full displayed size of any protected quotation with a price that is superior or equal to the price of the Post ISO entered on NSX. If these requirements are met, the Post ISO will be executed by sweeping the NSX Book up to and including the order's limit price, without regard to protected quotations at away markets.

[29] *See* footnote 23, *supra.*

Sale Price Test at a price at or below the current national best bid. As proposed, such an order or portion of an order will remain on the NSX Book, but will not execute in whole or in part at a price equal to or below the current national best bid during the Short Sale Price Test Period. The Exchange is proposing this amendment to align the rule text with the operation of the System in this circumstance.

The Exchange adopted Rule 11.11(c)(2)(E)(iii) in November 2013.[30] The rule provides that a sell short Market Peg Zero Display Reserve Order[31] resting on the NSX Book will track the Protected Best Bid, which is defined in Rule 1.5P.(3) as the higher of the protected national best bid or the best displayed bid on the NSX Book and, if matched by the System for execution during a Short Sale Price Test in the subject security, will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid in compliance with Rule 201 of Regulation SHO. The rule further provides that ''[a]ny such order or portion of such order will be canceled by the System if at a price equal to or below the current national best bid.''

As proposed, the Exchange seeks to amend subparagraph (iii) to remove the provision that specifies that a resting Market Peg Zero Display Reserve Order or portion of such an order will be canceled by the System if matched for execution during the Short Sale Price Test at a price equal to or below the current national best bid. As a result of System testing, the Exchange determined that a resting sell short Market Peg Zero Display Reserve Order, if matched by the System for execution during a Short Sale Price Test in the subject security, will be executed only to the extent that the Protected Best Bid is above the current national best bid and the sell short order can be executed, in whole or in part, at a price above the current national best bid.

However, System testing also indicated that, instead of canceling any remaining unexecuted portion of such an order, the System would leave the remaining unexecuted portion of the order on the NSX Book. The Exchange notes that the behavior of the System in this circumstance would not result in an execution of an order at a price equal to or below the national best bid during the Short Sale Price Test since the sell short Market Peg Zero Display Reserve Order would not execute unless the national best bid moved and the unfilled order or portion of the order could be executed at a price above the national best bid. The Exchange also notes that it did not detect an instance where this System behavior occurred with respect to an actual sell short Market Peg Zero Display Reserve Order entered by an ETP Holder and resting on the NSX Book during a Short Sale Price Test.

Since the Exchange's testing disclosed that the behavior of the System did not align with subparagraph (iii) and further confirmed that no execution would occur at a price equal to or below the current national best bid in violation of Regulation SHO, the Exchange determined to amend the rule to remove the statement regarding cancellation of any unexecuted portion of a sell short Market Peg Zero Display Reserve Order if matched for execution during the Short Sale Price Test. Additionally, the Exchange is proposing to make non-substantive changes to the text of subparagraph (iii) to align with the language and form used in other sections of Rule 11.21 as proposed to be amended.

Amendment of Rule 13.2, Failure To Deliver and Failure To Receive

The Exchange is proposing to amend Rule 13.2 to delete the existing text and incorporate by reference Rules 200, Definition of ''Short Sale'' and Marking Requirements, 203, Borrowing and Delivery Requirements and 204, Close-Out Requirement, of Regulation SHO pursuant to the Act.[32] Currently, Rule 13.2(a) states that ''[n]o ETP Holder shall sell a security for his own account, or buy a security as an ETP Holder for a customer (except exempt securities), if he has a fail to deliver in that security 60 days old or older.'' Rule 13.2(b) states that ''[f]or good cause shown and in exceptional circumstances, an ETP Holder may request and receive exemption from the provisions of the Rule by written request to the Secretary of the Exchange.''

The Exchange proposes to amend Rule 13.2 to delete the current text of the rule and, in its place, adopt text stating that ''[b]orrowing and deliveries shall be effected in accordance with Rule 203 of Regulation SHO under the Exchange Act. The Exchange incorporates by reference Rules 200, 203 and 204 of Regulation SHO, to Exchange Rule 13.2, as if they were fully set forth herein.''[33]

The Exchange is proposing this amendment to remove the text regarding failure to deliver and failure to receive a security since such rule text is obsolete in view of the requirements set forth in Rules 200, 203 and 204 of Regulation SHO. Specifically, Rule 200, Definition of ''short sale'' and marking requirements, defines ownership of a security for short sale purposes and clarifies the requirement to determine a short seller's net aggregate position. Rule 203, Borrowing and delivery requirements, provides *inter alia* that, subject to certain exceptions, a broker-dealer effecting a short sale order in any equity security have reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.[34] The ''locate'' requirement must be documented prior to the broker-dealer effecting the short sale.[35] Rule 203(b)(3) requires a broker-dealer to take action to close out a failure to deliver in a ''threshold'' security that has remained open for thirteen consecutive settlement days by purchasing securities of a like kind and quantity.[36] Rule 204 of Regulation SHO[37] governs the close-out requirements applicable to both long and short sales of equity securities.

The Exchange believes that these provisions of Regulation SHO, which are intended to apply uniform rules to address the failure to deliver or failure to receive, render the Exchange's rule obsolete.

2. Statutory Basis

The Exchange believes that the proposed rule amendments are consistent with the provisions of Section 6(b) of the Act[38] in general, and further the objectives of Section 6(b)(5) of the Act[39] in particular. The proposed amendments to the Exchange's rules are designed, among other things, to promote just and equitable principles of trade and, in general, protect investors and the public interest. The Exchange's proposal is designed to provide clarity and transparency with respect to written policies and procedures established by

[30] *See* Securities Exchange Act Release No. 70881 (November 14, 2013), 78 FR 69734 (November 20, 2013) (SR–NSX–2013–20).

[31] Exchange Rule 11.11(c)(2)(A) defines a Market Peg Zero Display Reserve Order as a Zero Display Reserve Order with a price set, or ''pegged,'' to track the inside quote on the opposite side of the market.

[32] 17 CFR 242.200, 17 CFR 242.203 and 17 CFR 242.204.

[33] The Exchange notes that other exchanges have adopted the same approach with respect to their rules regarding failure to deliver and failure to receive. *See, e.g.,* BATS Exchange Inc. Rule 13.2 (Failure to Deliver and Failure to Receive); EDGA Exchange Inc. Rule 13.2 (Short Sale Borrowing and Delivery Requirements).

[34] 17 CFR 242.203(b)(1).

[35] 17 CFR 242.203(b)(1)(iii).

[36] 17 CFR 242.203(b)(3).

[37] 17 CFR 242.204.

[38] 15 U.S.C. 78(f)(b).

[39] 15 U.S.C. 78(f)(b)(5).

the Exchange, and the System controls it implemented, to enforce the provisions of Rule 201. To this extent, the Exchange believes that its proposal furthers the requirements of Rule 201 that trading centers 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 in violation of the short sale price restrictions contained in Rule 201. The proposed amendments enhance the Exchange's written policies and procedures regarding the execution and display of permissible orders and the execution of orders marked ''short exempt'' during the Short Sale Price Test.

The Exchange further submits that proposed paragraph (b) of Rule 11.21, which describes the responsibilities of ETP Holders with respect to marking orders ''short exempt,'' and *Interpretations and Policies* .01 of Rule 11.21, which states that NSXS, as the Exchange's outbound order routing facility, relies on the ETP Holder's correct marking of an order as ''short exempt'' without independently verifying the accuracy of such marking, are consistent with Section 6(b)(5) of the Act. The Exchange believes that these amendments promote just and equitable principles of trade and further the public interest by clearly stating the ETP Holder's responsibility for correct order marking and providing transparency as to those responsibilities in the Exchange's rules.

The Exchange submits that the proposed amendment to reposition Rule 11.11(c)(2)(E)(i)–(iii) to Rule 11.21, and delete the statement that a ''resting'' sell short Market Peg Zero Display Reserve Order or portion of such an order will be canceled by the System if at a price at or below the current national best bid, is consistent with Section 6(b)(5) of the Act in that it will assure that the rule text is logically organized and correctly describes with the operation of the System, thereby enhancing clarity and transparency in the Exchange's rules and promoting just and equitable principles of trade and the public interest.

The Exchange further submits that the proposed amendment to Rule 13.2 to incorporate by reference Rules 200, 203 and 204 of Regulation SHO is consistent with Section 6(b)(5) of the Act in that it is designed to impart uniformity in the regulatory requirements governing the failure to deliver and failure to receive securities and close-out requirements, thereby promoting cooperation and coordination in the regulation of securities transactions and enhancing investor protection and the public interest.

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 for the furtherance of the Act. All trading centers are obligated to comply with the provisions of Regulation SHO. The proposed rule amendments provide additional clarity and transparency into the Exchange's written policies and procedures for handling sell short orders in compliance with Regulation SHO. The Exchange submits that the proposed amendments impose no unnecessary or inappropriate burden on competition and, in fact, operate to promote competition by providing ETP Holders, their customers, and the investing public with enhanced information regarding the Exchange's written policies and procedures and the System functionality for handling sell short orders in compliance with Regulation SHO.

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 comments on the proposed rule change from market participants or others.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. 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) [40] of the Exchange Act and Rule 19b–4(f)(6) [41] thereunder.

The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become effective and operative upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) [42] of the Act and Rule 19b–4(f)(6) thereunder. In support of its request, the Exchange stated that, because the rule amendments are designed to provide greater transparency and clarity into the Exchange's written policies and procedures for the execution and display of permissible orders during the Short Sale Price Test and the execution of orders marked ''short exempt.'' The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the protection of investors and the public interest will be enhanced by making the proposed amendments publicly available to market participants and the investing public as soon as practicable, and prior to the resumption of trading on the Exchange. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal as effective and operative upon filing.[43]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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 email to *rule-comments@sec.gov.* Please include File Number SR–NSX–2015–04 on the subject line.

Paper Comments

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

[40] 15 U.S.C. 78s(b)(3)(A).

[41] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description of the text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change, or such other time as designated by the Commission. The Exchange provided the Commission with the required notice.

[42] 15 U.S.C. 78s(b)(3)(A)(iii).

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

All submissions should refer to File No. SR–NSX–2015–04. This file number should be included in the subject line if email is used. To help the Commission process and review 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings 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–NSX–2015–04 and should be submitted on or before August 26, 2015.

For the Commission by the Division of Trading and Markets, pursuant to the delegated authority.[44]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–19124 Filed 8–4–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75561; File No. SR–Phlx–2015–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 3301B(a)

July 30, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2015, NASDAQ OMX PHLX LLC (''Phlx'' 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 prepared by the Exchange. 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 Rule 3301B(a) to remove the Market Hours Immediate or Cancel Time in Force and to delay implementation of changes to the Good-til-market close Time in Force, which were recently adopted by Phlx but are not yet implemented.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 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.

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

1. Purpose

The Exchange is proposing to amend Rule 3301B(a) to remove the Market Hours Immediate or Cancel (''Market Hours IOC'' or ''MIOC'') Time-in-Force and to delay implementation of changes to the Good-til-market close (''GTMC'') Time-in-Force, which were recently adopted by Phlx but are not yet implemented in the NASDAQ OMX PSX System (''System'' or ''PSX'').[3] Time-in-Force (''TIF'') is a characteristic of an order that limits the period of time that the System will hold an order for potential execution. An Order that is designated to deactivate immediately after determining whether the Order is marketable may be referred to as having a TIF of ''Immediate or Cancel'' or ''IOC''.[4] Any Order with a TIF of IOC entered between 9:30 a.m. ET and 4:00 p.m. ET is considered as having a TIF of MIOC.[5] The MIOC TIF is very similar to the SIOC[6] TIF, but MIOC designated orders are limited to entry and potential execution only during Regular Market Hours. An order designated with a TIF of MIOC that is entered outside of Regular Market Hours would be returned to the entering member firm without attempting to execute. The Exchange has determined that, based on a lack of market participant desire for a MIOC TIF and the cost that would be incurred in developing and implementing it on the Exchange, it will not implement the MIOC TIF at this juncture. Accordingly, the Exchange is proposing to delete text under Rule 3301B(a)(1) concerning the MIOC TIF, which is effective but not yet operative.

The Exchange is also proposing to amend Rule 3301B(a)(6) to make it clear that the Exchange will no longer accept GTMC orders for execution after 4:00 p.m. Eastern Time, which are currently accepted and converted to SIOC orders if received after 4:00 p.m. Eastern Time. In April 2015, the Exchange proposed this change to the predecessor rule concerning GTMC orders in a prior filing with the Commission,[7] and had anticipated implementing the change at some point in the second quarter of 2015. During that time, the Commission approved a rule change that renumbered and clarified the rule.[8] Accordingly, the Exchange is now amending the renumbered rule to reflect the changes made in the prior filing. The Exchange

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44 17 CFR 200.30–3(a)(12).

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b–4.

3 The Exchange notes that the text at issue in this filing concerning the MIOC TIF under Rule 3301B(a)(1) is not yet implemented, but was recently inadvertently incorporated into the PSX rulebook when the Commission approved certain rules governing the PSX equities market in order to provide additional detail and clarity regarding its order type functionality. *See* Securities Exchange Act Release No. 75293 (June 24, 2015), 80 FR 37327 (June 30, 2015) (SR–Phlx–2015–29). Notwithstanding its inadvertent inclusion in the rulebook, the rule text concerning the MIOC TIF is not yet effective. The Exchange had anticipated implementing the MIOC and GTMC changes in the second quarter of 2015. *See* Securities Exchange Act Release No. 74628 (April 1, 2015), 80 FR 18662 (April 7, 2015) (SR–Phlx–2015–32).

4 *See* Rule 3301B(a)(1).

5 *Id.*

6 An Order with a Time-in-Force of IOC that is entered at any time between 8:00 a.m. ET and 5:00 p.m. ET may be referred to as having a Time-in-Force of ''System Hours Immediate or Cancel'' or ''SIOC''. *Id.*

7 *See* Securities Exchange Act Release No. 74628 (April 1, 2015), 80 FR 18662 (April 7, 2015) (SR–Phlx–2015–32).

8 The Exchange also made a clarifying change to the rule, which was incorporated into the renumbered rule. *Supra* note 3.