

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 242

[Release No. 34-55160; File No. S7-10-04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance dates.

SUMMARY: The Commission is extending for a limited period of time three of the future compliance dates for Rule 610 and Rule 611 of Regulation NMS (“Rule 610” and “Rule 611,” respectively) under the Securities Exchange Act of 1934 (“Exchange Act”). Rule 610 requires fair and non-discriminatory access to quotations, establishes a limit on access fees, and requires each national securities exchange and national securities association to adopt, maintain, and enforce written rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross protected quotations. Rule 611 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. The Commission is extending the three compliance dates to give automated trading centers additional time to complete the rollout of their new or modified trading systems.

DATES: The effective date for Rule 610 and Rule 611 remains August 29, 2005. Three compliance dates for different functional stages of compliance with Rule 610 and Rule 611 have been extended as set forth in section I of this release, beginning with the “Trading Phase Date,” as defined in section I of this release, which has been extended from February 5, 2007 to

March 5, 2007. The effective date for this release is January 30, 2007.

FOR FURTHER INFORMATION CONTACT: Raymond Lombardo, Special Counsel, at (202) 551-5615, or David Liu, Special Counsel, at (202) 551-5645, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-6628.

SUPPLEMENTARY INFORMATION:

I. Discussion

In June 2005, the Commission published its release adopting Regulation NMS.¹ The adopted regulatory requirements include: (1) new Rule 610, which addresses access to markets and locking or crossing quotations; (2) new Rule 611, which provides intermarket protection against trade-throughs (*i.e.*, trades at inferior prices) for certain displayed quotations that are automated and accessible; and (3) an amendment to the joint industry plans for disseminating market information to the public that modifies the formulas for allocating plan revenues to the self-regulatory organization (“SRO”) participants in the plans (“Allocation Amendment”).

Given the new regulatory framework created by Regulation NMS and the desire of investors and other market participants for more automated and efficient trading services, many SROs have announced major revisions of their trading systems. The SROs and other securities industry participants have been working to comply with the new NMS regulatory requirements. In May 2006, the Commission extended the original compliance dates for Rules 611 and 610 to a series of five dates for phased-in compliance that incorporated the major functional steps

¹ Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (“NMS Release”).

required to achieve full implementation of Regulation NMS.² The extended dates were as follows:

October 16, 2006 (“Specifications Date”): Final date for publication on Internet Web sites of applicable SROs (i.e., the exchange for SRO trading facilities and the NASD for ADF participants) of final technical specifications for interaction with Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below).

February 5, 2007 (“Trading Phase Date”): Final date for full operation of Regulation NMS-compliant trading systems of all automated trading centers (both SRO trading facilities and ADF participants) that intend to qualify their quotations for trade-through protection under Rule 611 during the Pilots Stocks Phase and All Stocks Phase (as defined below). The period from February 5, 2007 till May 21, 2007 was the “Trading Phase.”

May 21, 2007 (“Pilot Stocks Phase Date”): Start of full industry compliance with Rule 610 and Rule 611 for 250 NMS stocks (100 NYSE stocks, 100 Nasdaq stocks, and 50 Amex stocks). The period from May 21, 2007 till July 9, 2007 was the “Pilot Stocks Phase.”

July 9, 2007 (“All Stocks Phase Date”): Start of full industry compliance with Rule 610 and Rule 611 for all remaining NMS stocks. The period from July 9, 2007 till October 8, 2007 was the “All Stocks Phase.”

October 8, 2007 (“Completion Date”): Completion of phased-in compliance with Rule 610 and Rule 611.

² Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (“Extension Release”).

In addition, the Commission, by separate order, exempted the SRO participants in the joint industry market data plans from compliance with the Allocation Amendment until April 1, 2007.³

The revised compliance dates were designed to provide additional time for the SROs to develop and install their new trading systems, as well as to give all securities industry participants an enhanced opportunity to complete their compliance preparations in the least disruptive and most cost-effective manner possible. Recently, the New York Stock Exchange,⁴ a major U.S. equity market, requested a four-week extension of the Trading Phase Date. The NYSE stated that, due to delays in the rollout schedule for its Hybrid Market, the NYSE would not be in a position to comply with the requirements for “automated quotations,” as defined in Rule 600(b)(3) of Regulation NMS, until the end of February 2007. The NYSE believed that continuing with the scheduled implementation of Rule 611, without appropriate testing and quality assurance for the NYSE trading systems, would jeopardize best execution for investors and put the securities industry and investors at risk.

The Commission agrees that implementing Regulation NMS without full participation by a major market such as the NYSE would jeopardize the smooth functioning of the U.S. equity markets. It therefore has decided to extend the Trading Phase Date until March 5, 2007. To reflect the extended Trading Phase Date and avoid coinciding with major trading days in June 2007, the Commission also has decided to extend the Pilot Stocks Phase Date until July 9, 2007, and the All Stocks Phase Date until August 20, 2007. In contrast, the Specifications Date of

³ Securities Exchange Act Release No. 53828 (May 18, 2006) (order exempting SROs from compliance with the Allocation Amendment until April 1, 2007).

⁴ See letter from Mary Yeager, Assistant Secretary, New York Stock Exchange to Nancy Morris, Secretary, Commission, dated January 8, 2007.

October 16, 2006 has already passed and is not affected by this release. In addition, the Completion Date of October 8, 2007 remains unchanged.

Accordingly, the future compliance dates for Rule 610 and Rule 611, as revised by this release, are as follows:

Trading Phase Date: March 5, 2007. The revised Trading Phase now will extend from March 5, 2007 till July 9, 2007.

Pilot Stocks Phase Date: July 9, 2007. The revised Pilot Stocks Phase now will extend from July 9, 2007 till August 20, 2007.

All Stocks Phase Date: August 20, 2007. The revised All Stocks Phase now will extend from August 20, 2007 till October 8, 2007.

Completion Date: October 8, 2007.

In addition, the April 1, 2007 date for SRO participants in the joint-industry market data plans to comply with the Allocation Amendment is not affected by this release and remains April 1, 2007.

II. Conclusion

For the reasons cited above, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance dates set forth herein are impractical, unnecessary, or contrary to the public interest.⁵ All industry participants will receive substantial additional time to comply with Rule 610 and Rule 611 beyond the compliance dates originally set forth in the NMS Release, as modified by the Extension Release. In addition, the Commission recognizes that industry participants urgently need notice of the extended

⁵ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (“APA”) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impractical, unnecessary, or contrary to the public interest”).

compliance dates so that they do not expend unnecessary time and resources in meeting the previous compliance dates. Providing immediate effectiveness upon publication of this release will allow industry participants to adjust their implementation plans accordingly.⁶

By the Commission.

Nancy M. Morris
Secretary

Date: January 24, 2007

⁶ The compliance date extensions set forth in this release are effective upon publication in the Federal Register. Section 553(d)(1) of the APA allows effective dates that are less than 30 days after publication for a “substantive rule which grants or recognizes an exemption or relieves a restriction.” 5 U.S.C. 553(d)(1).