

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65132)

August 15, 2011

Order Temporarily Exempting the Floor Broker Operations of Broker-Dealers with Market Access That Handle Orders on a Manual Basis from the Automated Controls Requirement of Rule 15c3-5(c)(1)(ii) and Rule 15c3-5(c)(2) under the Securities Exchange Act of 1934

I. Introduction

Pursuant to Rule 15c3-5(f) under the Securities Exchange Act of 1934 (“Exchange Act”),¹ the Securities and Exchange Commission (“Commission”), by order, may exempt from the provisions of Rule 15c3-5 (“Rule”), either unconditionally or on specified terms and conditions, any broker or dealer, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.² As discussed below, the Commission temporarily is exempting the floor broker operations of broker-dealers with market access that handle orders on a manual basis (“Floor Brokers”) from the automated controls requirement of Rules 15c3-5(c)(1)(ii)³ and (c)(2)⁴ until November 30, 2011.⁵

¹ See 17 CFR 240.15c3-5(f).

² See also Exchange Act Section 36(a)(1), 15 U.S.C. 78mm(a)(1) (providing general authority for Commission to grant exemptions from provisions of Exchange Act and rules thereunder, provided the Commission makes certain required findings).

³ See 17 CFR 240.15c3-5(c)(1)(ii).

⁴ See 17 CFR 240.15c3-5(c)(2).

⁵ On June 27, 2011, the Commission extended the compliance date, until November 30, 2011, for all of the requirements of Rule 15c3-5 for fixed income securities, and the requirements of Rule 15c3-5(c)(1)(i) for all securities. See Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011).

II. Background

On November 3, 2010, the Commission adopted Rule 15c3-5 under the Exchange Act.⁶ Among other things, Rule 15c3-5 requires each broker-dealer with access to trading securities⁷ directly on an exchange or ATS, including a broker-dealer providing sponsored or direct market access to customers or other persons, and each broker-dealer operator of an ATS that provides access to trading securities directly on its ATS to a person other than a broker-dealer, to establish, document, and maintain a system of risk management controls and supervisory procedures that, among other things, is reasonably designed to (1) systematically limit the financial exposure of the broker-dealer that could arise as a result of market access,⁸ and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access.⁹ The required financial risk management controls and supervisory procedures must be reasonably designed to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds,¹⁰ or that appear to be erroneous.¹¹ The regulatory risk management controls and supervisory procedures must also be reasonably designed to prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis,¹² prevent the entry of orders that the broker-dealers or customer is restricted

⁶ See Exchange Act Release No. 63241 (Nov. 3, 2010), 75 FR 69792 (Nov. 15, 2010) (“Rule 15c3-5 Adopting Release”).

⁷ Rule 15c3-5 applies to trading in all securities on an exchange or ATS. *Id.* at 69765.

⁸ See 17 CFR 240.15c3-5(c)(1).

⁹ See 17 CFR 240.15c3-5(c)(2).

¹⁰ See 17 CFR 240.15c3-5(c)(1)(i).

¹¹ See 17 CFR 240.15c3-5(c)(1)(ii).

¹² See 17 CFR 240.15c3-5(c)(2)(i).

from trading,¹³ restrict market access technology and systems to authorized persons,¹⁴ and assure appropriate surveillance personnel receive immediate post-trade execution reports.¹⁵

The Commission has received a request from NYSE Amex LLC (“NYSE Amex”), NYSE Arca, Inc. (“NYSE Arca”), and New York Stock Exchange LLC (“NYSE”)(collectively, “NYSE Euronext”) to extend the compliance date for the automated controls requirement pursuant to Rules 15c3-5(c)(1)(ii) and (c)(2) for Floor Brokers until November 30, 2011.¹⁶ Specifically, NYSE Euronext indicated that more time is needed to complete the implementation of the automated controls required pursuant to Rules 15c3-5(c)(1)(ii) and (c)(2) for orders handled on a manual basis because the floor broker operations of broker-dealers with market access historically have used manual systematic controls for their risk management and regulatory purposes with respect to manual orders, and they will need additional time to complete the development and implementation of automated controls for such manual orders.¹⁷ NYSE Euronext explained that certain Floor Brokers initially believed that their existing combination of automated and manual controls would be sufficient for compliance with Rule 15c3-5,¹⁸ and only recently became aware that the required pre-trade controls under the Rule must be systemic and automated for compliance purposes.¹⁹ NYSE Euronext also explained that

¹³ See 17 CFR 240.15c3-5(c)(2)(ii).

¹⁴ See 17 CFR 240.15c3-5(c)(2)(iii).

¹⁵ See 17 CFR 240.15c3-5(c)(2)(iv).

¹⁶ See letter from Janet McGinness, Senior Vice President – Legal and Corporate Secretary, NYSE Euronext, on behalf of NYSE Amex, NYSE Arca, and NYSE, to Elizabeth Murphy, Secretary, Commission, dated June 29, 2011 (“NYSE Euronext Letter”).

¹⁷ Id.

¹⁸ Id. at 2.

¹⁹ See Rule 15c3-5 Adopting Release.

additional time would provide the NYSE Euronext with an opportunity to update Floor Broker-related systems and thereby facilitate compliance with the Rule by Floor Brokers.²⁰

III. Discussion

The Commission is temporarily exempting Floor Brokers from the automated controls requirement of Rules 15c3-5(c)(1)(ii)²¹ and (c)(2)²² until November 30, 2011. The Commission believes that providing additional time for such Floor Brokers to complete the development and implementation of automated controls pursuant to Rules 15c3-5(c)(1)(ii) and (c)(2) for orders handled on a manual basis, where manual systematic controls historically were used for risk management and regulatory purposes, is reasonable. In addition, the Commission believes that temporarily exempting Floor Brokers from the automated controls requirement of Rules 15c3-5(c)(1)(ii) and (c)(2) until November 30, 2011, should facilitate the orderly and meaningful implementation of the required automated risk management controls for those Floor Brokers that need more time to be in compliance with the Rule.

For the foregoing reasons, the Commission finds that granting the foregoing temporary exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

²⁰ NYSE Euronext Letter at 2.

²¹ See 17 CFR 240.15c3-5(c)(1)(ii).

²² See 17 CFR 240.15c3-5(c)(2).

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 15c3-5(f),²³ that the floor broker operations of broker-dealers with market access that handle orders on a manual basis are temporarily exempted from the automated controls requirement of Rules 15c3-5(c)(1)(ii)²⁴ and (c)(2)²⁵ until November 30, 2011.

By the Commission.

Elizabeth M. Murphy
Secretary

²³ See 17 CFR 240.15c3-5(f).

²⁴ See 17 CFR 240.15c3-5(c)(1)(ii).

²⁵ See 17 CFR 240.15c3-5(c)(2).