

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34-52355; File No. S7-10-04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for the amendment to Rule 301(b)(5) of Regulation ATS under the Securities Exchange Act of 1934 that was adopted in connection with Regulation NMS.

DATES: The effective date for amended Rule 301(b)(5) remains August 29, 2005. The compliance date for amended Rule 301(b)(5) is extended from August 29, 2005 to September 28, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, (202) 551-5602, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

On June 29, 2005, the Securities and Exchange Commission (“Commission”) published in the Federal Register its release adopting Regulation NMS¹ under the Securities Exchange Act of 1934 (“Exchange Act”). In connection with the adoption of Regulation NMS, the Commission amended Rule 301(b)(5) of Regulation ATS² under the Exchange Act (“Fair Access

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

² See 17 CFR 242.300 et seq. Regulation ATS governs the activities of alternative trading systems.

Rule”). The Fair Access Rule provides, among other things, that, if an alternative trading system accounts for a certain percentage of the average daily volume in a security over four of the preceding six months, it: (1) must establish written standards for granting access to trading on its system, and (2) must not unreasonably prohibit or limit any person in respect to access to services offered by such system by applying these written standards in an unfair or discriminatory manner.³ In adopting Regulation NMS, the Commission amended the Fair Access Rule to lower the fair access threshold from 20% of the average daily volume in a security to 5%. The Regulation NMS Adopting Release established an effective date and a compliance date of August 29, 2005 for the amended Fair Access Rule.

A number of questions have been raised during the implementation period regarding the application of the amended Fair Access Rule to different business models. The Commission and its staff are continuing to consider these issues as well as requests for exemptive relief. Delaying the compliance date for thirty days will permit the Commission and its staff additional time to respond to the questions and exemptive requests.

For the reasons cited above and given the impending August 29, 2005 compliance date, the Commission, for good cause, finds that notice and solicitation of comment regarding the extension of the compliance date for the amended Fair Access Rule is impracticable, unnecessary, or contrary to the public interest.⁴ The Commission notes that the compliance date is a few days away, and that a limited extension of the compliance date will provide the

³ See 17 CFR 242.301(b)(5).

⁴ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are “impracticable, unnecessary, or contrary to the public interest”).

Commission and its staff with needed time to resolve implementation issues with respect to various market participants.

Further, the Commission notes that, in light of these time constraints, full notice and comment could not be completed prior to the August 29, 2005 compliance date. The change to the compliance date for amended Rule 301(b)(5) is effective immediately. This date is less than 30 days after publication in the Federal Register, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for “a substantive rule which grants or recognizes an exemption or relieves a restriction.”⁵

By the Commission.

Jonathan G. Katz
Secretary

August 29, 2005

⁵ 5 U.S.C. 553(d)(1).