

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53828)

May 18, 2006

Order Granting Exemption from Compliance with Amendment to Joint Industry Plans for Disseminating Market Information

I. Introduction

Pursuant to Rule 608(e) of Regulation NMS¹ under the Securities Exchange Act of 1934 (“Exchange Act”), the Securities and Exchange Commission (“Commission”) may exempt from compliance with the provisions of Rule 608, either unconditionally or on specified terms and conditions, any self-regulatory organization (“SRO”), member thereof, or specified security, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system. As discussed below, the Commission is exercising its authority under Rule 608(e) to exempt, until April 1, 2007, the SROs that are participants in the joint industry plans for disseminating market information from compliance with an amendment to such plans that modifies the formulas for allocating plan revenues to participants.

II. Background

On June 29, 2005, the Commission published in the Federal Register its release adopting Regulation NMS (“NMS Release”).² The adopted regulatory requirements include: (1) new Rule 610 of Regulation NMS, which addresses access to markets and locking or crossing quotations; (2) new Rule 611 of Regulation NMS, which provides intermarket protection against

¹ 17 CFR 242.608(e).

² Securities Exchange Act Release No. 51808 (Jun. 9, 2005), 70 FR 37496 (Jun. 29, 2005).

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 formula for allocating plan revenues (“Allocation Amendment”).³

The effective date for all of the initiatives in the NMS Release was August 29, 2005. The compliance dates for Rule 610, Rule 611, and the Allocation Amendment have not yet arrived. Phase 1 of compliance with Rule 610 and Rule 611 for 250 NMS stocks was set for June 29, 2006, and Phase 2 for all NMS stocks was set for August 31, 2006. The compliance date for the Allocation Amendment is September 1, 2006. For the reasons discussed below, the Commission has determined that the SROs and securities industry participants need additional time to implement these new NMS regulatory requirements. It therefore has decided to exempt the SRO participants in the joint industry plans from compliance with the Allocation Amendment until April 1, 2007. In addition, the Commission has today, by separate release, extended the compliance dates for Rule 610 and Rule 611.⁴

III. Discussion

As discussed in the NMS Release,⁵ consolidated quotation and trade data in NMS stocks is disseminated to the public through three Networks jointly operated by the SROs pursuant to joint industry plans – Network A for stocks listed on the NYSE, Network C for stocks listed on

³ The three joint-industry plans are (1) the CTA Plan, which is operated by the Consolidated Tape Association and disseminates transaction information for exchange-listed securities other than Nasdaq-listed securities, (2) the CQ Plan, which disseminates consolidated quotation information for exchange-listed securities other than Nasdaq-listed securities, and (3) the Nasdaq UTP Plan, which disseminates consolidated transaction and quotation information for Nasdaq-listed securities. The CTA Plan and CQ Plan are available at www.nysedata.com. The Nasdaq UTP Plan is available at www.utpdata.com.

⁴ See Securities Exchange Act Release No. 53829 (May 18, 2006) (extending compliance dates for Rule 610 and Rule 611 of Regulation NMS from June 29, 2006 to a series of dates, beginning on October 16, 2006, for different functional stages of compliance) (“Extension Release”).

⁵ 70 FR at 37558.

Nasdaq, and Network B for stocks listed on the Amex and other national securities exchanges. The Allocation Amendment modifies the existing formulas for allocating revenues to the SRO participants in the plans.⁶ One of the most significant changes is the introduction of “Quoting Shares” – the allocation of revenues based on the extent to which automated quotations displayed by SROs equal the national best bid or offer in NMS stocks. Under the old formulas, no revenues are allocated for quotations. Under the new formula, 50% of revenues will be allocated for Quoting Shares.

Pursuant to the Extension Release issued today, the deadline for automated trading centers to commence full operation of Regulation NMS-compliant trading systems has been extended to February 5, 2007, if such automated trading centers are to receive trade-through protection as discussed in the Extension Release.⁷ Given this extension for automated trading centers, the Commission believes that the SRO participants in the joint industry plans should be exempted from complying with the Allocation Amendment until after that date. The exemption will give trading centers additional time to implement systems that are capable of displaying automated quotations. In this way, the plans will not begin allocating revenues pursuant to the Allocation Amendment until all trading centers have had an appropriate opportunity to qualify for Quoting Shares. In addition, April 1 is the beginning of a new calendar quarter, which should ease the transition from the old formulas to the new formula. The Commission therefore has determined that the exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system

⁶ See NMS Release, 70 FR at 37568.

⁷ See Extension Release, note 4 above, section II.A.2.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 608(e) of Regulation NMS, that the SRO participants in the joint industry plans for disseminating market information are exempt from compliance with the Allocation Amendment until April 1, 2007.

By the Commission.

Nancy M. Morris
Secretary