pursues its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2011–105 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2011–105 on the subject line if e-mail is used. To help the Commission process and review your 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NASDAQ. 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–NASDAQ–2011–105 and should be submitted on or before September 8, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.14 Elizabeth M. Murphy, Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65132]


August 15, 2011.

I. Introduction

Pursuant to Rule 15c3–5(f) under the Securities Exchange Act of 1934 ( “Exchange Act”), 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) and (c)(2)4 until November 30, 2011.5

II. Background

On November 3, 2010, the Commission adopted Rule 15c3–5 under


See Rule 15c3–5 applies to trading in all securities on an exchange or ATS, Id. at 67975.


1 See 17 CFR 240.15c3–5(i)(i).


3 See 17 CFR 240.15c3–5(c)(1)(i).

4 See 17 CFR 240.15c3–5(c)(2).


6 Among other things, Rule 15c3–5 requires each broker-dealer with access to trading securities 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, and (2) ensure compliance with all regulatory requirements that are applicable in connection with market access. 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, or that appear to be erroneous. 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, prevent the entry of orders that the broker-dealers or customer is restricted from trading, restrict market access technology and systems to authorized persons, and assure appropriate surveillance personnel receive immediate post-trade execution reports.

The Commission has received a request from NYSE Arca LLC (“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. 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 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 complete the development and implementation of 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.

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[52x73]20 NYSE Euronext Letter at 2.

19 See Rule 15c3-5 Adopting Release.

21 See 7 CFR 240.15c3-5(c)(1)(ii).

22 See 7 CFR 240.15c3-5(c)(2).

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).