

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79448 ; File No. SR-BX-2014-048)

December 1, 2016

Self-Regulatory Organizations; NASDAQ BX, Inc.; Order Granting an Extension to Limited Exemption from Rule 612(c) of Regulation NMS in Connection with the Exchange's Retail Price Improvement Program Until December 1, 2017

On November 28, 2014, the Commission issued an order pursuant to its authority under Rule 612(c) of Regulation NMS¹ ("Sub-Penny Rule") that granted the NASDAQ BX, Inc. ("BX" or "Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement Program ("RPI Program").² The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the RPI Program on a one-year pilot term.³ On November 20, 2015, the Commission extended the temporary exemption until December 2016 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 1, 2016.⁴

The Exchange now seeks to extend the exemption until December 1, 2017.⁵ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the RPI Program until December 1, 2017.⁶ In its request to extend the

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 73702, 79 FR 72049 (December 4, 2014), (SR-BX-2014-048) ("RPI Approval Order").

³ See id.

⁴ See Securities Exchange Act Release No. 76495, 80 FR 74185 (November 27, 2015), (SR-BX-2014-048).

⁵ See SR-BX-2016-065; see also Letter from Jeffrey Davis, Vice President and Deputy General Counsel and Secretary, NASDAQ BX, Inc. to Brent J. Fields, Secretary, and Securities and Exchange Commission, dated November 22, 2016 ("BX Letter").

⁶ See SR-BX-2016-065.

exemption, the Exchange notes that given the gradual implementation of the RPI Program and the preliminary participation and results, extending the exemption would provide additional opportunities for greater participation and assessment of the results. Accordingly, the Exchange has asked for additional time to allow it and the Commission to analyze data concerning the RPI Program that the Exchange has committed to provide to the Commission.⁷

For this reason and the reasons stated in the RPI Approval Order originally granting the limited exemption, the Commission, pursuant to its authority under Rule 612(c) of Regulation NMS, finds that extending the exemption is appropriate in the public interest and consistent with the protection of investors.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted an extension of the limited exemption from Rule 612 of Regulation NMS that allows the Exchange to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its RPI Program, until December 1, 2017.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Act. Responsibility for compliance with any

⁷ See e.g., BX Letter; SR-BX-2016-065; RPI Approval Order, supra note 2.

applicable provisions of the Federal securities laws must rest with the persons relying on the exemption that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

Brent J. Fields
Secretary

⁸ 17 CFR 200.30-3(a)(83).