

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-79586; File No. SR-NYSEArca-2013-107)

December 16, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Program Until June 30, 2017

On December 23, 2013, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted NYSE Arca, Inc. ("Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Liquidity Program ("Program").² The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.³ The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on December 31, 2016.⁴

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 71176 (Dec. 23, 2013), 78 FR 79524 (Dec. 30, 2013) (SR-NYSEArca-2013-107) ("Order").

³ See id.

⁴ The pilot term of the Program was originally scheduled to end on April 14, 2015, but the Exchange initially extended the term through September 30, 2015, see Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (NYSEArca-2015-22), and then, through various extensions, through December 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84), 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30), 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47), and 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). Each time the pilot term of the Program was extended, the Commission also granted the Exchange's request to extend the Sub-Penny exemption. See Securities Exchange Act Release Nos. 74609 (Mar. 30, 2015), 80 FR 18272 (Apr. 3, 2015); 76021 (Sept. 29, 2015), 80 FR 60207 (Oct. 5, 2015); 77437 (Mar. 24, 2016), 81 FR 17752 (Mar. 30, 2016); and 78677 (Aug. 25, 2016), 81 FR 60037 (Aug. 31, 2016). The current exemption expires December 31, 2016.

The Exchange now seeks to extend the exemption until June 30, 2017.⁵ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.⁶ In its request to extend the exemption, the Exchange notes that the participation in the Program has increased more recently. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze more robust data concerning the Program, which the Exchange committed to provide to the Commission.⁷ For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, 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 a limited exemption from Rule 612 of Regulation NMS that allows it 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 Retail Liquidity Program, until June 30, 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 Securities Exchange Act of 1934.

⁵ See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated November 28, 2016.

⁶ See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157).

⁷ See Order, supra note 2, 78 FR at 79529.

Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemption that is the subject of this Order.

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

Eduardo A. Aleman
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(83).