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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80861; File Nos. SR-NYSE-2011-55; SR-NYSEAmex-2011-84]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchanges' Retail Liquidity Programs Until December 31, 2017

June 5, 2017

On July 3, 2012, 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 the New York Stock Exchange LLC (“NYSE”) and NYSE MKT LLC² (“NYSE MKT” and, together with NYSE, the “Exchanges”) limited exemptions from the Sub-Penny Rule in connection with the operation of the Exchanges’ respective Retail Liquidity Programs (“Programs”).³ The limited exemptions were granted concurrently with the Commission’s approval of the Exchanges’ proposals to adopt their respective Programs for one-year pilot terms.⁴ The exemptions were granted coterminous with the effectiveness of the pilot Programs;

¹ 17 CFR 242.612(c).

² At the time it filed the original proposal to adopt the Retail Liquidity Program, NYSE MKT went by the name NYSE Amex LLC. On May 14, 2012, the Exchange filed a proposed rule change, immediately effective upon filing, to change its name from NYSE Amex LLC to NYSE MKT LLC. See Securities Exchange Act Release No. 67037 (May 21, 2012), 77 FR 31415 (May 25, 2012) (SR-NYSEAmex-2012-32).

³ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (“Order”).

⁴ See id.

both the pilot Programs and exemptions are scheduled to expire on June 30, 2017.⁵

The Exchanges now seek to extend the exemptions until June 30, 2017.⁶ The Exchanges' request was made in conjunction with immediately effective filings that extend the operation of the Programs through the same date.⁷ In their request to extend the exemptions, the Exchanges

⁵ The pilot terms of the Programs were originally scheduled to end on July 31, 2013, but the Exchanges initially extended the terms for an additional year, through July 31, 2014, see Securities Exchange Act Release Nos. 70096 (August 2, 2013), 78 FR 48520 (August 8, 2013) (SR-NYSE-2013-48), and 70100 (August 2, 2013), 78 FR 48535 (August 8, 2013) (SR-NYSEMKT-2013-60), and then subsequently extended the terms again through March 31, 2015, see Securities Exchange Act Release Nos. 72629 (July 16, 2014), 79 FR 42564 (July 22, 2014) (SR-NYSE-2014-35), and 72625 (July 16, 2014), 79 FR 42566 (July 22, 2014) (SR-NYSEMKT-2014-60), September 30, 2015, see Securities Exchange Act Release Nos. 74454 (March 6, 2015), 80 FR 13054 (March 12, 2015) (SR-NYSE-2015-10), and 74455 (March 6, 2015), 80 FR 13047 (March 12, 2015) (SR-NYSEMKT-2015-14), March 31, 2016, see Securities Exchange Act Release Nos. 75993 (September 28, 2015), 80 FR 59844 (October 2, 2015) (SR-NYSE-2015-41), and 75995 (September 28, 2015), 80 FR 59836 (October 2, 2015) (SR-NYSEMKT-2015-69), August 31, 2016, see Securities Exchange Act Release Nos. 77426 (March 23, 2016), 81 FR 17533 (March 29, 2016) (SR-NYSE-2016-25), and 77424 (March 23, 2016), 81 FR 17522 (March 29, 2016) (SR-NYSEMKT-2016-39), December 31, 2016, see Securities Exchange Act Release Nos. 78600 (August 17, 2016), 81 FR 57642 (August 23, 2016) (SR-NYSE-2016-54), and 78602 (August 17, 2016), 81 FR 57639 (August 23, 2016) (SR-NYSEMKT-2016-76), and June 30, 2017, see Securities Exchange Act Release Nos. 79493 (December 7, 2016), 81 FR 90019 (December 13, 2016) (SR-NYSE-2016-82), and 79509 (December 8, 2016), 81 FR 90389 (Dec. 14, 2016) (SR-NYSEMKT-2016-112). Each time the pilot terms of the Programs were extended, the Commission granted the Exchanges' requests to also extend the Sub-Penny exemptions through July 31, 2014, see Securities Exchange Act Release No. 70085 (July 31, 2013), 78 FR 47807 (August 6, 2013), March 31, 2015, see Securities Exchange Act Release No. 72732 (July 31, 2014), 79 FR 45851 (August 6, 2014), September 30, 2015, see Securities Exchange Act Release No. 74507 (March 13, 2015), 80 FR 14421 (March 19, 2015), March 31, 2016, see Securities Exchange Act Release No. 76020 (September 29, 2015), 80 FR 60201 (October 5, 2015), August 31, 2016, see Securities Exchange Act Release No. 77438 (March 24, 2016), 81 FR 17752 (March 30, 2016), December 31, 2016, see Securities Exchange Act Release No. 78678 (August 25, 2016), 81 FR 60031 (August 31, 2016), and June 30, 2017, see Securities Exchange Act Release No. 79587 (Dec. 16, 2016), 81 FR 93975 (Dec. 22, 2016).

⁶ See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated May 23, 2017.

⁷ See Securities Exchange Act Release Nos. 80844 (June 1, 2017) (SR-NYSE-2017-26) and 80850 (June 2, 2017) (SR-NYSEMKT-2017-33).

note that the participation in the Programs has increased more recently. Accordingly, the Exchanges have asked for additional time to allow themselves and the Commission to analyze more robust data concerning the Programs, which the Exchanges committed to provide to the Commission.⁸ For this reason and the reasons stated in the Order originally granting the limited exemptions, the Commission finds that extending the exemptions, 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, each 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 December 31, 2017.

The limited and temporary exemptions extended by this Order are 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. Responsibility for compliance with any applicable provisions of the Federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Robert W. Errett,
Deputy Secretary.

⁸ See Order, *supra* note 3, 77 FR at 40681.

⁹ 17 CFR 200.30-3(a)(83).

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