

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act<sup>48</sup> to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CHX-2016-15 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.
- All submissions should refer to File No. SR-CHX-2016-15. This file number should be included on the subject line if email 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 changes 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, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the CHX. 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 No. SR-CHX-2016-15 and should be submitted on or before September 21, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78677; File No. SR-NYSEArca-2013-107]

### 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 December 31, 2016

August 25, 2016.

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")<sup>1</sup> 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").<sup>2</sup> 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.<sup>3</sup> The exemption was granted coterminous with the effectiveness of the pilot Program; both the pilot Program and exemption are scheduled to expire on August 31, 2016.<sup>4</sup>

<sup>49</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 17 CFR 242.612(c).

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

<sup>3</sup> See *id.*

<sup>4</sup> 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 (March 24, 2015), 80 FR 16705 (March 30, 2015) (NYSEArca-2015-22), and then subsequently extended the term again through August 31, 2016, see Securities Exchange Act Release Nos. 75994 (September 28, 2015), 80 FR 59834 (October 2, 2015) (SR-NYSEArca-2015-84), 77236 (Feb. 25, 2016), 81 FR 10943 (March 2, 2016) (SR-NYSEArca-2016-30), and 77425 (March 23, 2016), 81 FR 17523 (March 29, 2016) (SR-NYSEArca-2016-47). Each time the pilot term of the Program was extended, the Commission granted the Exchange's request to also extend the Sub-

The Exchange now seeks to extend the exemption until December 31, 2016.<sup>5</sup> The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program through the same date.<sup>6</sup> 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.<sup>7</sup> 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 August 31, 2016.

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. 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.

Penny exemption through September 30, 2015, see Securities Exchange Act Release No. 74609 (March 30, 2015), 80 FR 18272 (April 3, 2015), March 31, 2016, see Securities Exchange Act Release No. 34-76021 (September 29, 2015), 80 FR 60207 (October 5, 2015), and August 31, 2016, see Securities Exchange Act Release No. 34-77437 (March 24, 2016), 81 FR 17752 (March 30, 2016).

<sup>5</sup> See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Securities and Exchange Commission, dated August 8, 2016.

<sup>6</sup> See Securities Exchange Act Release No. 78601 (August 17, 2016), 81 FR 57632 (August 23, 2016) (SR-NYSEArca-2016-113).

<sup>7</sup> See Order, *supra* note 2, 78 FR at 79529.

<sup>48</sup> 15 U.S.C. 78s(b)(2)(B).

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

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-20884 Filed 8-30-16; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78673; File No. SR-NYSEMKT-2016-79]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Rules Relating to Pre-Opening Indications and Opening Procedures

August 25, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on August 16, 2016, NYSE MKT LLC (the “Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. The proposed rule change is available on the Exchange’s Web site at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend its rules relating to pre-opening indications and opening procedures to promote greater efficiency and transparency at the open of trading on the Exchange. In particular, the Exchange proposes to:

- Make changes to the rules related to the pre-opening indication process by:
  - Amending Rules 15—Equities (“Rule 15”) and 123D—Equities (“Rule 123D”) to consolidate the requirements for publication of pre-open indications in a single rule (Rule 15);
  - changing the conditions in which a Designated Market Maker (“DMM”) is required to publish a pre-opening indication in a security to an anticipated 5% move from a security’s reference price and, during extreme market-wide volatility, an anticipated 10% from a security’s reference price; and
  - providing for the CEO of the Exchange to temporarily suspend the requirement to publish pre-opening indications.
- Make changes to Rule 123D related to the opening process by:
  - Incorporating all procedures relating to openings, other than pre-opening indications, in Rule 123D; and
  - Specifying that DMMs may effect an opening of a security electronically within specified percentage and volume parameters, which would be doubled during extreme market-wide volatility; and
  - providing for the CEO of the Exchange to temporarily suspend price and volume limitations for a DMM automated open or the requirement for prior Floor Approval before opening or reopening a security.
- Delete Rule 48—Equities (“Rule 48”).
- Make conforming changes to Rules 80C—Equities (“Rule 80C”) and 9217.

The Exchange believes that the proposed changes will enhance transparency regarding the Exchange’s opening process by specifying new parameters for how the opening at the Exchange would be effectuated on trading days experiencing extreme market-wide volatility, which would include both additional information before the open through the use of new parameters for pre-opening indications and expanded ability for DMMs to

effectuate an opening electronically. The proposed rule changes are designed to preserve the Exchange’s existing model, which values human touch when opening securities with significant price or volume disparity, while at the same time promoting automated measures to have as many securities open as close to 9:30 a.m. as feasible, even during extreme market-wide volatility.

These proposed changes are based on recent amendments to the rules of the New York Stock Exchange LLC (“NYSE”).<sup>4</sup>

#### Background

The Exchange’s current pre-opening procedures are outlined in Rules 15 (Pre-Opening Indications), 48 (Exemptive Relief—Extreme Market Volatility Condition), and 123D (Openings and Halts in Trading).

Rule 15(a) provides that if the opening transaction in a security will be at a price that represents a change of more than the “applicable price change” specified in the Rule,<sup>5</sup> the DMM arranging the opening transaction or the Exchange shall issue a pre-opening indication (“Rule 15 Indication”), which represents a price range in which a security is anticipated to open.

A Rule 15 Indication is published on the Exchange’s proprietary data feeds only and includes the security and the price range within which the DMM anticipates the opening transaction will occur, and would include any orally-represented Floor broker interest for the open. The applicable price ranges for determining whether to publish a Rule 15 Indication are based on five different price buckets and are expressed in dollar and percentage parameters:

<sup>4</sup> See Securities Exchange Act Release No. 78228 (July 5, 2016), 81 FR 44907 (July 11, 2016) (SR-NYSE-2016-24) (“NYSE Approval Order”); and Securities Exchange Act Release No. 78512 (August 9, 2016) (SR-NYSE-2016-53) (Notice of Filing).

<sup>5</sup> In current Rule 15, other than for certain American Depositary Receipts (“ADRs”), the “applicable price change” is measured from a security’s last reported sale price on the Exchange, the security’s offering price in the case of an initial public offering (“IPO”), or the security’s last reported sale price on the market from which it is being transferred. For an ADR where the trading day of the underlying security in the primary foreign market for the ADR concludes after the previous day’s trading in the U.S. has ended, the “applicable price change” is measured from closing price of the primary foreign market. For an ADR where the primary foreign market on which the underlying security is open for trading at the time of the opening of the Exchange, the “applicable price change” is measured from parity with the last sale price of the underlying security.

<sup>8</sup> 17 CFR 200.30-3(a)(83).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.