

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 with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, 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, 2019.

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 exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84762; File No. SR-NYSEArca-2013-107]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Liquidity Programs Until June 30, 2019

December 10, 2018.

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 its 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 December 31, 2018.<sup>4</sup>

<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> On March 19, 2015, the Exchange requested an extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 19, 2015. The pilot period for the Program was extended until September 30, 2015. See Securities Exchange Act Release No. 74572 (Mar. 24, 2015), 80 FR 16705 (Mar. 30, 2015) (SR-NYSEArca-2015-22). On September 17, 2015, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated September 17, 2015. The pilot period for the Program was extended until March 31, 2016. See Securities Exchange Act Release Nos. 75994 (Sept. 28, 2015), 80 FR 59834 (Oct. 2, 2015) (SR-NYSEArca-2015-84) and 77236 (Feb. 25, 2016), 81 FR 10943 (Mar. 2, 2016) (SR-NYSEArca-2016-30). On March 17, 2016, the Exchange requested another extension of the exemption for the Program. See letter from Martha Redding, Senior Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated March 17, 2016. The pilot period for the Program was extended until August 31, 2016. See Securities Exchange Act Release No. 77425 (Mar. 23, 2016), 81 FR 17523 (Mar. 29, 2016) (SR-NYSEArca-2016-47). On August 8, 2016, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated August 8, 2016. The pilot period for the Program was extended until December 31, 2016. See Securities Exchange Act Release No. 78601 (Aug. 17, 2016), 81 FR 57632 (Aug. 23, 2016) (SR-NYSEArca-2016-113). On November 28, 2016, the Exchange requested another extension of the exemption for the program.

The Exchange now seeks to extend the exemptions until June 30, 2019.<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 with additional Retail Liquidity Providers. Accordingly, the Exchange has asked for additional time to both allow for additional opportunities for greater participation in the Program and allow for further assessment of the results of such participation. For this reason and the reasons stated in the Order originally granting the limited exemptions, 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, 2019.

The limited and temporary exemption extended by this Order is subject to

See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated November 28, 2016. The pilot period for the Program was extended until June 30, 2017. See Securities Exchange Act Release No. 79495 (Dec. 7, 2016), 81 FR 90033 (Dec. 13, 2016) (SR-NYSEArca-2016-157). On May 23, 2017, the Exchange requested another extension of the exemption for the program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, to Brent J. Fields, Secretary, Commission, dated May 23, 2017. The pilot period for the Program was extended until December 31, 2017. See Securities Exchange Act Release No. 80851 (June 2, 2017), 82 FR 26722 (June 8, 2017) (SR-NYSEArca-2017-63). On November 30, 2017, the Exchange requested another extension of the exemption to the program. See Letter from Martha Redding, Assistant Secretary, NYSE, to Brent J. Fields, Secretary, Commission, dated November 30, 2017. The pilot period for the Program was extended until June 30, 2018. See Securities Exchange Act Release No. 82289 (December 11, 2017), 82 FR 59677 (December 15, 2017) (SR-NYSEArca-2017-137). On June 14, 2018, the Exchange requested another extension of the exemption for the Program. See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated June 14, 2018. The pilot period for the Program was extended until December 31, 2018. See Securities Exchange Act Release No. 83538 (June 28, 2018), 83 FR 31210 (July 3, 2018) (SR-NYSE-2018-46).

<sup>5</sup> See Letter from Martha Redding, Associate General Counsel and Assistant Secretary, NYSE to Brent J. Fields, Secretary, Commission, dated November 30, 2018.

<sup>6</sup> See SR-NYSEArca-2018-89.

<sup>6</sup> See SR-NYSE-2018-59.

<sup>7</sup> 17 CFR 200.30-3(a)(83).

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.<sup>7</sup>

**Eduardo A. Aleman,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84755; File No. SR-NYSE-2018-60]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 15 Relating to the Reference Price for Exchange-Listed Securities

December 7, 2018.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that on December 4, 2018, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Rule 15 relating to the Reference Price for Exchange-listed securities. The proposed rule change is available on the Exchange’s website 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 Rule 15 relating to a security’s Reference Price that is used in determining whether to publish a pre-opening indication prior to an opening auction in a security that is already listed on the Exchange. The Exchange proposes to use the “Official Closing Price” (“OCP”) rather than the last reported sale price <sup>4</sup> as an Exchange-listed security’s Reference Price and to clarify that such Reference Price would be adjusted as applicable based on the publicly disclosed terms of a corporate action.

Rule 15(a) states that a pre-opening indication will include the security and the price range within which the opening price is anticipated to occur and that a pre-opening indication is published via the securities information processor and the Exchange’s proprietary data feeds. Rule 15(b) provides that a designated market maker (“DMM”) will publish a pre-opening indication either: (i) Before a security opens if the opening transaction on the Exchange is anticipated to be at a price that represents a change of more than the “Applicable Price Range,” as specified in Rule 15(d), <sup>5</sup> from a specified “Reference Price,” as specified in Rule 15(c); or (ii) if a security has not opened by 10:00 a.m. Eastern Time. Accordingly, the Reference Price operates as a trigger for whether to publish a pre-opening indication. The pre-opening indication price range that is published is based on where the

opening price is anticipated to occur; the Reference Price is not published as part of the pre-opening indication.

Rule 15(c)(1)(A) specifies that the Reference Price for a security (other than an American Depositary Receipt) that is already listed on the Exchange will be the security’s last reported sale price on the Exchange. <sup>6</sup> The Exchange proposes to amend Rule 15(c)(1)(A) to: (i) Use the Official Closing Price rather than the last reported sale price as an Exchange-listed security’s Reference Price; and (ii) specify that the Official Closing Price would be adjusted as applicable based on the publicly disclosed terms of a corporate action.

**Official Closing Price.** Currently, the reference in Rule 15(c)(1)(A) to a security’s “last reported sale price” means the last round-lot sale price on the Exchange that is reported to the Consolidated Tape, which includes the closing transaction price of a round lot or more in a security, and if there was no closing transaction, the last round-lot sale price on the Exchange in that security. For example, if there was no closing transaction, and the last reported sale price of a round lot or more on the Exchange was from 3:30 p.m., the Exchange would use that 3:30 p.m. last reported sale price as the Reference Price for Rule 15(c)(1)(A). If there was no reported sale price the prior day, the Exchange will use the last reported sale price, regardless of how long ago it was published.

The Exchange proposes to update the terminology used in Rule 15(c)(1)(A) to reference the term OCP rather than reference a security’s “last reported sale price.” When the OCP is determined under Rule 123C(1)(e)(i), <sup>7</sup> use of such OCP for purposes of Rule 15(c)(1)(A) would result in the same Reference Price as under the current rule using the last reported sale price. <sup>8</sup> In addition, by

<sup>6</sup> See Rule 15(c)(1). Rule 15(c)(1)(B)–(D) also specifies what the Reference Price will be for a security that is the subject of an initial public offering, that is transferred from another securities market, or that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual.

<sup>7</sup> In 2015, the Exchange amended Rule 123C to define the term OCP and specified how the Exchange would determine the OCP for a security. See Securities Exchange Act Release No. 76598 (December 9, 2015), 80 FR 77688 (December 15, 2015) (SR-NYSE-2015-62) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>8</sup> Rule 123C(1)(e)(i) provides that “[t]he Official Closing Price is the price established in a closing transaction under paragraphs (7) and (8) of [Rule 123C] of one round lot or more. If there is no closing transaction in a security or if a closing transaction is less than a round lot, the Official Closing Price will be the most recent last-sale eligible trade in such security on the Exchange on that trading day.” Rule 123C(7) and (8) specify the allocation process for the closing transaction. Rule 123C(1)(e)(i)(A) provides that “[i]f there were no last-sale eligible

<sup>4</sup> All references to “last reported sale price” or “last-sale eligible trade” are to a trade that is of at least one round lot.

<sup>5</sup> Under Rule 15(d)(1), the Applicable Price Range for determining whether to publish a pre-opening indication is 5% for securities with a Reference Price over \$3.00 and \$0.15 for securities with a Reference Price equal to or lower than \$3.00.

<sup>7</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.