

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84846; File No. SR-BX-2014-048)

December 18, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Order Granting an Extension to Limited Exemptions From Rule 612(c) of Regulation NMS In Connection With the Exchange's Retail Price Improvement Program Until June 30, 2019

On November 28, 2014, 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 NASDAQ OMX BX, Inc., n/k/a 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 (the "RPI Program").² The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt its RPI Program for 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 On December 1, 2016, the Commission extended the temporary exemption until December 1, 2017 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 1, 2017.⁵ On December 1, 2017, the Commission extended the temporary exemption until June 30, 2018 concurrently with an immediately effective filing

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. 76490 (November 20, 2015), 80 FR 74165 (November 27, 2015) (SR-BX-2015-073).

⁵ See Securities Exchange Act Release No. 79446 (December 1, 2016), 81 FR 88290 (December 7, 2016) (SR-BX-2016-065).

that extended the operation of the RPI Program until June 30, 2018.⁶ On June 28, 2018, the Commission again extended the temporary exemption until December 31, 2018 concurrently with an immediately effective filing that extended the operation of the RPI Program until December 31, 2018.⁷

The Exchange now seeks to extend the exemption until June 30, 2019.⁸ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the RPI Program through the same date.⁹ In its request to extend the 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.¹⁰ Accordingly, the Exchange has asked additional time to allow it and the Commission to analyze data concerning the RPI Program, which the Exchange committed to provide to the Commission.¹¹ 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 pursuant to its authority under Rule 612(c) of Regulation NMS, extending the exemption is appropriate in the public interest and consistent with the protection of investors.

⁶ See Securities Exchange Act Release No. 82192 (December 1, 2017), 82 FR 57809 (December 7, 2017) (SR-BX-2017-055).

⁷ See Securities Exchange Act Release No. 83539 (June 28, 2018), 83 FR 31203 (July 3, 2018) (SR-BX-2018-026).

⁸ See Letter from Jeffrey S. Davis, Vice President and Deputy General Counsel and Secretary, Nasdaq BX, Inc. to Eduardo A. Aleman, Assistant Secretary, Securities and Exchange Commission, dated December 11, 2018 (“BX Letter”).

⁹ See SR-BX-2018-063.

¹⁰ See, e.g., BX Letter at 3; RPI Approval Order, *supra* note 2.

¹¹ See, id.

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 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 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.¹²

Eduardo A. Aleman
Deputy Secretary

¹² 17 CFR 200.30-3(a)(83).