

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34-52196; File No. S7-10-04]

Regulation NMS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for the rule under the Securities Exchange Act of 1934 included as part of Regulation NMS that governs sub-penny quoting.

DATES: The effective date of Regulation NMS published on June 29, 2005 (70 FR 37496) remains August 29, 2005. Effective on [insert date of publication in the Federal Register], the compliance date for the sub-penny rule is extended from August 29, 2005 to January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Michael Gaw, (202) 551-5602, Senior Special Counsel, Division of Market Regulation, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

On June 29, 2005, the Securities and Exchange Commission ("Commission") published in the Federal Register its release adopting Regulation NMS¹ under the Securities Exchange Act of 1934. Rule 612 of Regulation NMS² governs sub-penny

¹ 17 CFR 242.600 to 242.612. See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) ("Regulation NMS Adopting Release").

² 17 CFR 242.612.

quoting of NMS stocks.³ The Regulation NMS Adopting Release established an effective date and a compliance date of August 29, 2005 for Rule 612.⁴

During the implementation period for Rule 612, numerous market participants have stated that complying with Rule 612 by August 29, 2005 will be unduly burdensome based on interpretive and programming issues and have requested a delay. The original compliance date – August 29, 2005 – is less than one month away. According to market participants, an extension of the compliance date will provide them additional time to address issues related to compliance with and implementation of Rule 612 and to make necessary systems and other changes to comply with the requirements of Rule 612.

The Commission believes that delaying the compliance date for Rule 612 for a short period of time is appropriate. An extension of the compliance date will provide the Commission and its staff time to respond to the interpretive issues that the industry has identified. Additionally, an extension will provide market participants with adequate time to resolve implementation issues. The benefits of Rule 612⁵ will be delayed briefly as market participants address issues related to compliance with and implementation of Rule 612, ascertain what systems and other changes are necessary to comply with the rule, and develop, implement, and test those changes. Accordingly, the Commission

³ See 17 CFR 242.600(b)(46) and (b)(47) (defining "NMS stock").

⁴ See 70 FR at 37576.

⁵ See Regulation NMS Adopting Release, 70 FR at 37588 (discussing benefits of Rule 612).

believes it is appropriate to extend the compliance date for Rule 612 until January 31, 2006. The effective date of August 29, 2005 remains unchanged.⁶

The Commission for good cause finds that, for the reasons cited above, notice and solicitation of comment regarding the extension of the compliance date for Rule 612 is impracticable, unnecessary, and contrary to the public interest.⁷ The Commission notes that the August 29, 2005 compliance date is less than one month away, and that a limited extension of the compliance date will provide market participants with additional time to seek guidance on interpretive questions, apply the requirements of Rule 612, and implement appropriate changes. Further, the Commission notes that, in light of these time constraints, full notice and comment rulemaking could not be completed prior to the August 29, 2005 compliance date. The change to the compliance date for Rule 612 is effective upon publication in the Federal Register. This date is less than 30 days after

⁶ This extension does not alter the effective or compliance dates of the other provisions of Regulation NMS.

⁷ See Section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are "impracticable, unnecessary, or contrary to the public interest").

publication in the Federal Register, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for "a substantive rule which grants or recognizes an exemption or relieves a restriction."⁸

By the Commission.

Jonathan G. Katz
Secretary

Date: August 2, 2005

⁸ 5 U.S.C. 553(d)(1).