

**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 August 8, 2005, 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 NMS<sup>1</sup> under the Securities Exchange Act of 1934. Rule 612 of Regulation NMS<sup>2</sup> governs sub-penny quoting of NMS stocks.<sup>3</sup> The Regulation NMS Adopting Release established an effective date and a compliance date of August 29, 2005 for Rule 612.<sup>4</sup>

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 612<sup>5</sup> 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 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.<sup>6</sup>

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.<sup>7</sup> 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 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."<sup>8</sup>

Dated: August 2, 2005.

By the Commission.

**Jonathan G. Katz,**  
*Secretary.*

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

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

<sup>7</sup> 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").

<sup>8</sup> 5 U.S.C. 553(d)(1).

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9218]

RIN 1545-BE16

**Exclusions From Gross Income of Foreign Corporations****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Final rule; delay of effective date.**SUMMARY:** This document amends the applicability date of final regulations under sections 883(a) and (c) (TD 9087) which were published in the **Federal Register** on August 26, 2003 (68 FR 51394). Those final regulations relate to income derived by a foreign corporation from the international operation of ships or aircraft.**DATES:** *Effective Date:* These regulations are effective August 8, 2005.*Applicability Date:* These regulations are applicable to taxable years of foreign corporations beginning after September 24, 2004.**FOR FURTHER INFORMATION CONTACT:** Patricia Bray, (202) 622-3880 (not a toll-free number).**SUPPLEMENTARY INFORMATION:****Background**

Sections 883(a)(1) and (a)(2) of the Internal Revenue Code (Code) provide that income derived by a foreign corporation from the international operation of ships or aircraft may be excluded from gross income.

In 2003, the Treasury Department and the IRS issued final regulations under section 883 applicable to taxable years of a foreign corporation beginning 30 days or more after August 26, 2003. The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of U.S. Federal income taxation, provided that the corporation can satisfy certain stock ownership and related documentation requirements.

The regulations provide that a foreign corporation may satisfy the stock ownership requirement if it meets one of three tests under § 1.883-1(c)(2). One such test provides that a controlled foreign corporation, as defined in section 957(a) (CFC), satisfies the stock ownership test of § 1.883-1(c)(2) if it meets the requirements of § 1.883-3, including the income inclusion test of

<sup>1</sup> 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").

<sup>2</sup> 17 CFR 242.612.

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

<sup>4</sup> See 70 FR at 37576.