



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

October 4, 2016

Mr. Albert J. Kim  
Vice President and Associate General Counsel  
Chicago Stock Exchange, Inc.  
One Financial Place  
440 S. LaSalle Street, Suite 800  
Chicago, IL 60605-1070

Re: Exemption Under Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 from Certain Provisions of the "Plan to Implement a Tick Size Pilot Program"

Dear Mr. Kim:

In your letter dated October 3, 2016, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") requests an exemption from certain of the quoting and trading requirements in the National Market System Plan to Implement a Tick Size Pilot Program ("Plan"). Specifically, CHX requests that the Commission, pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act"), exempt CHX from the requirements of Rule 608(c) of Regulation NMS to comply with, and enforce compliance by its members with Section VI of the Plan that the Exchange only accept orders for Pilot Securities in the Test Groups in \$0.05 increments in order to permit CHX to accept: (1) Cross Orders<sup>1</sup> for Pilot Securities in Test Group One in increment less than \$0.05 and (2) Cross Orders for Pilot Securities in Test Group Two and Test Group Three in increment less than \$0.05 only if the Cross Orders would qualify as Negotiated Trades under the Plan.

Rule 608(c) of Regulation NMS requires CHX to comply with the terms of the Tick Size Pilot Plan.<sup>2</sup> Further, Rule 608(c) of Regulation NMS requires CHX to enforce compliance with the Tick Size Pilot Plan by its members and persons associated with its members.<sup>3</sup> Rule 608(e) of Regulation NMS provides that the Commission may exempt from the provisions of Rule 608 of Regulation NMS, either conditionally or on specified terms and conditions, any self-regulatory organization, if the Commission determines that such exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanisms of, a national market system.<sup>4</sup>

<sup>1</sup> See CHX Article 1, Rule 2(a)(3) for the definition of Cross Order.

<sup>2</sup> 17 CFR 242.608(c).

<sup>3</sup> Id.

<sup>4</sup> 17 CFR 242.608(e).

As discussed below, the Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, is hereby granting to CHX a limited exemption from the requirement to comply with the provisions under Section VI of the Plan in order to allow CHX to accept: (1) Cross Orders for Pilot Securities in Test Group One in an increment less than \$0.05 and (2) Cross Orders for Pilot Securities in Test Group Two and Test Group Three in an increment less than \$0.05 only if the Cross Orders would qualify as Negotiated Trades under the Plan.

Currently, CHX rules permit any type of Cross Order, in any security, whether the order is priced less than, equal to, or above \$1.00, to be submitted in an increment as small as \$0.000001.<sup>5</sup> Your letter notes that such pricing is premised on the Commission's grant of a limited exemption from Rule 612 of Regulation NMS<sup>6</sup> to the national securities exchanges, which permits Cross Orders to be accepted in sub-penny increments if: (1) the orders are immediately executed against each other and (2) the cross transaction is effected in accordance with exchange rules approved or established pursuant to Section 19(b) of the Exchange Act.<sup>7</sup>

Section VI.B of the Plan provides that Participants<sup>8</sup> must adopt rules prohibiting Participants and members from displaying, ranking, or accepting from any person any displayable or non-displayable bids or offers, orders, or indications of interest in any Test Group One Pilot Security in a price increment other than \$0.05.<sup>9</sup> This quoting requirement is reflected in Section VI.C for Test Group Two Pilot Securities and Section VI.D for Test Group Three Pilot Securities. CHX has adopted these quoting requirements in CHX Article 20, Rule 13(a). Your letter notes that the quoting requirements in the Plan, as reflected in CHX rules, are based, in part, on Rule 612 of Regulation NMS.<sup>10</sup> However, the Plan and CHX Article 20, Rule 13(a) does not provide an exception for Cross Orders from the \$0.05 quoting increment similar to the exemption contained in the Rule 612 Exemption Order. Accordingly, the Exchange is requesting an exemption to allow Cross Orders to be accepted in increments less than \$0.05 that would be consistent with the Rule 612 Exemption Order, current CHX rules for non-Pilot Securities and the Plan.

Your letter notes that, if the requested exemption was granted, then Cross Orders for Test Group One Pilot Securities could be accepted in any current permissible

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<sup>5</sup> CHX Article 20, Rule 4(a)(7)(B).

<sup>6</sup> See Securities Exchange Act Release No. 54714 (November 6, 2006), 71 FR 66352 (November 14, 2006) ("Rule 612 Exemption Order").

<sup>7</sup> 15 U.S.C. 78s(b).

<sup>8</sup> Unless otherwise specified, capitalized terms in this letter are based on the defined terms in the Plan.

<sup>9</sup> Orders priced to execute at the midpoint and orders entered in a Participant-operated retail liquidity program may be ranked and accepted in increments of less than \$0.05.

<sup>10</sup> 17 CFR 242.612.

increment smaller than \$0.05 and would be executable at any price increment that is currently permissible.<sup>11</sup> Further, your letter notes that Cross Orders for Test Group Two and Test Group Three Pilot Securities could be accepted in an increment smaller than \$0.05 but could only be executed in an increment smaller than \$0.05 if the Cross Order qualifies as a Negotiated Trade under the Plan.<sup>12</sup> Finally, your letter notes that in connection with the exemptive relief, CHX has proposed rules to codify the requested exemptive relief in CHX Rule Article 20, Rule 13(c)(4), and the requested exemptive relief would provide consistency as to how Cross Orders are treated on the Exchange.

The Commission hereby grants CHX a limited exemption from the requirement in Section VI of the Plan that prohibits CHX from accepting Cross Orders in price increments other than \$0.05, to allow CHX to accept: (1) Cross Orders for Pilot Securities in Test Group One in an increment less than \$0.05 and (2) Cross Orders for Pilot Securities in Test Group Two and Test Group Three in an increment less than \$0.05 only if the Cross Orders would qualify as Negotiated Trades under the Plan. The Commission believes that this limited exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to, and the perfection of the mechanism of a national market system, because the limited exemption will allow CHX to accept Cross Orders for Pilot Securities in the Test Groups in a manner that is consistent with the Plan, CHX rules, and the Rule 612 Exemption Order. In particular, the Plan contemplates that trades may occur for Pilot Securities in Test Group One in any price increment that is currently permitted and Negotiated Trades, as defined in the Plan, are permitted to be executed in increments less than \$0.05 in Test Groups Two and Three.

Accordingly, the Commission believes that it is appropriate to permit CHX to accept Cross Orders in Test Group One and those that qualify as Negotiated Trades in Test Groups Two and Three that are permitted to execute consistent with the current terms of the Plan. The Commission notes that any Cross Order that does not satisfy the Negotiated Trade definition would continue to be subject to the \$0.05 minimum trading increment in Test Groups Two and Three, as set forth in Sections VI.C and D of the Plan. Further, the Commission notes that all Cross Orders must be handled in accordance with CHX Article 20, Rule 4(a)(7)(B).

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<sup>11</sup> See CHX Article 20, Rule 4(a)(7)(B). Under the Plan, Pilot Securities in Test Group One are permitted to trade at any price increment that is currently permitted.

<sup>12</sup> Under the Plan, Pilot Securities in Test Groups Two and Three must trade in increments of \$0.05, however, the Plan provides that Negotiated Trades may execute in increments less than \$0.05.

This exemption is conditioned on the facts and representations presented in your letter. In the event any material change occurs with respect to any of the facts or representations presented, the exemption will expire and the Exchange must immediately resume operating in accordance with all of the provisions in the Tick Size Pilot Plan.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority.<sup>13</sup>

A handwritten signature in black ink, appearing to read 'D. Shillman', with a long horizontal flourish extending to the right.

David S. Shillman  
Associate Director

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<sup>13</sup> 17 CFR 200.30-3(a)(42).