

February 23, 2017

Robert W. Errett
Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

**Re: Exemptive Application Pursuant to Rule 608 of Regulation NMS –
NMS Plan to Implement a Tick Size Pilot Program**

Dear Mr. Errett:

Pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”), Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of itself and Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc. (collectively, “Participants”), requests that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the website data publication requirements of the National Market System Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”),¹ as discussed below.²

In consultation with the Commission, the Participants intend to submit proposed rule changes to modify certain aspects of the website data publication provisions (“Date of Appendix B Data Publication Rule Filings”).³ Specifically, the Participants intend to file proposed rule changes, as necessary, to delay the website publication of the required Appendix B data until April 28, 2017, to permit additional time to assess a means of addressing the confidentiality concerns raised in connection

¹ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”).

² Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Plan.

³ See e.g., File No. SR-FINRA-2017-005.

with the publication of Appendix B data.⁴ To the extent that the provisions contained in the Date of Appendix B Data Publication Rule Filings alter the data requirements in the Plan, as approved by the Commission, the Participants respectfully request that the Commission grant an exemption from those provisions of the Plan.

Background

On August 25, 2014, the Participants filed the Plan⁵ with Commission, pursuant to Section 11A of the Act⁶ and Rule 608 of Regulation NMS thereunder.⁷ The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.⁸ The Plan was published for comment in the Federal Register on November 7, 2014, and approved by the Commission, as modified, on May 6, 2015.⁹ The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.¹⁰ On November 6, 2015, the SEC provided an exemption to the Participants from implementing the Pilot until October 3, 2016.¹¹ The Plan is designed to allow the Commission, market participants, and the public to study and assess the impact of increment conventions on the liquidity and trading of the common stock of small-capitalization companies. Each Participant is required to comply, and to enforce compliance by its member organizations, as applicable, with the provisions of the Plan.

Among other things, the Plan provides for the collection of specified data, the transmission of data to the SEC, and the publication of data on Participant websites.¹²

⁴ See Letters from Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 (“Citadel letter”); and William Hebert, Managing Director, Financial Information Forum, to Robert Errett, Deputy Secretary, Commission, dated December 21, 2016 (“FIF letter”).

⁵ See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

⁶ 15 U.S.C. 78k-1.

⁷ 17 CFR 242.608.

⁸ See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

⁹ See Approval Order.

¹⁰ Id.

¹¹ See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

¹² See Section VII of the Plan. See also Appendices B and C to the Plan.

The Participants previously were granted exemptive relief and proposed rule changes to, among other things, delay the publication of website data pursuant to Appendices B and C to the Plan until February 28, 2017, and to delay the ongoing website publication by ninety days such that it would be published within 120 calendar days following the end of the month.¹³

Rule 608 and the Proposed Exemption

Rule 608(c) of Regulation NMS provides that “[e]ach self-regulatory organization shall comply with the terms of any effective national market system plan of which it is a sponsor or a participant. Each self-regulatory organization also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.”¹⁴ Rule 608(e) allows the Commission to “exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any self-regulatory organization, member thereof, or specified security, 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 perfection of the mechanisms of, a national market system.”¹⁵ The Participants are seeking exemptive relief from the specific Plan provisions set forth below.

Website Data Publication Requirements

Section VII(A) of the Plan (Collection of Trading Center Pilot Data) provides that the Participants must collect the following data with respect to Pilot Securities (as set forth in Appendix B):¹⁶

- Daily market quality statistics of orders by security, order type, original order size (as observed by the Trading Center), hidden status (as applicable), and coverage under Rule 605 of Regulation NMS;
- Specified data regarding market orders and marketable limit orders;

¹³ See, e.g., Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, dated November 30, 2016; see also Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-042).

¹⁴ 17 CFR 242.608(c).

¹⁵ 17 CFR 242.608(e).

¹⁶ See Section VII(A) of the Plan.

- Daily number of registered Market Makers; and
- Daily Market Maker participation statistics.

Section VII(A) of the Plan further provides, among other things, that on a monthly basis, each Participant and the DEA for each member of a Participant operating a Trading Center will, as applicable, make specified data publicly available on its respective website for free.

As stated above, the SEC previously provided exemptive relief, and the Participants amended their rules, as appropriate, to delay website publication of data pursuant to Appendices B and C until February 28, 2017, and to extend the 30-day delay provided for in the Plan by an additional 90 days.¹⁷ These delays were intended to address data confidentiality concerns by providing for the passage of additional time between the market information reflected in the data and the public availability of such information.

The Participants are requesting an exemption from Section VII(A) of the Plan to permit the Participants to adopt rule amendments, as necessary, to further delay website publication of Appendix B data until April 28, 2017, to permit additional time to assess a means of addressing the confidentiality concerns raised in connection with the publication of Appendix B data.¹⁸ The Participants believe that extending the period by which Participants must make publicly available the Appendix B data on Participant websites will support the Plan's objective that the data made publicly available will not identify the Trading Center that generated the data.¹⁹ The Participants are requesting this additional delay solely with regard to the publication of Appendix B data (Participant Appendix C data for the Pre-Pilot Period through the month of January 2017, will be published on the FINRA website on February 28, 2017). The Participants anticipate that proposed rule changes will be filed in the near future, as necessary, to address the data confidentiality issues raised regarding Appendix B data publication.²⁰

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For the reasons set forth above, the Participants respectfully request that, pursuant to Rule 608(e), the Commission grant exemptive relief to the provisions in the Plan as set forth above. The Participants therefore believe that this exemption is consistent with the public interest, the protection of investors, the maintenance of fair

¹⁷ See supra note 13.

¹⁸ See Citadel letter and FIF letter.

¹⁹ See Section VII(A) of the Plan.

²⁰ See Citadel letter and FIF letter.

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and orderly markets and the removal of impediments to, and perfection of the mechanisms of, a national market system.

Thank you in advance for your consideration of this request.

Very truly yours,

A handwritten signature in blue ink that reads "Robert Colby". The signature is written in a cursive style with a large, sweeping initial "R" and a long, horizontal flourish extending to the right.

Robert L.D. Colby