



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

February 28, 2017

Mr. Robert L.D. Colby
Executive Vice President and Chief Legal Officer
Financial Industry Regulatory Authority
1735 K Street NW
Washington, DC 20006

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. Colby:

In your letter dated February 23, 2017,¹ the 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, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc. and NYSE MKT LLC (collectively the “Participants”) request that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the data publication requirements of the National Market System Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”),² as discussed below.

Specifically, the Participants request that the Commission, pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”), exempt the Participants from the requirements of Rule 608(c) of Regulation NMS that they comply with certain provisions of Section VII of the Plan that addresses, among other things, the collection and publication of Pilot data.

¹ See letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Robert W. Errett, Deputy Secretary, U.S. Securities and Exchange Commission, dated February 23, 2017 (“Exemption Request”).

² See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). See also Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015). Unless otherwise specified, capitalized terms are the defined terms of the Plan.

Rule 608(c) of Regulation NMS requires the Participants to comply with the terms of the Plan.³ 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.⁴

As discussed below, the Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, is hereby granting each Participant a limited exemption from the requirement to comply with certain provisions of the Plan as required under Rule 608(c) of Regulation NMS so long as each Participant submits proposed rule changes to reflect the changes described below.

Exemption from Publishing Certain Pilot Data on a Monthly Basis

Section VII(A) (Collection of Trading Center Pilot Data) of the Plan provides that the Participants must collect certain data with respect to Pilot Securities, as set forth in Appendix B.⁵ Section VII(A) of the Plan further provides, among other things, that on a monthly basis, each Participant and the Designated Examining Authority (“DEA”) for each member of a Participant operating a Trading Center will, as applicable, make the specified data publicly available on its respective website for free. In addition, Section VII(A) of the Plan provides that the data made publicly available will not identify the Trading Center that generated the data.

The Commission previously provided exemptive relief, and the Participants amended their rules, as appropriate, to delay the first monthly website publication of Appendices B and C data until February 28, 2017.⁶ The delay of the first monthly publication of data purposefully created a time lag between the production and public availability of the data in order to mitigate the confidentiality concerns raised by certain market participants.⁷

³ 17 CFR 242.608(c).

⁴ 17 CFR 242.608(e).

⁵ Data specified in Appendix B includes 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; Daily number of registered Market Makers; and Daily Market Maker Participation statistics.

⁶ Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President Corporate Secretary, FINRA, dated November 30, 2016. Publication of Appendix B and C data was originally scheduled to start on November 30, 2016.

⁷ In addition, the Participants amended their rules to provide that they would publish Pilot data on their websites within 120 calendar days following month end. See e.g. Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016).

In the Exemption Request, the Participants note that there continue to be confidentiality concerns related to the publication of Appendix B data.⁸ Accordingly, the Participants request an exemption from Section VII(A) of the Plan to permit the Participants to further delay website publication of Appendix B data until April 28, 2017, to allow them to further assess a means of addressing the confidentiality concerns raised in connection with the publication of such data.⁹ In the Exemption Request, the Participants state that delaying the publication of 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. Further, the Participants state that they anticipate filing proposed rule changes in the near future, as necessary, to address confidentiality concerns related to the publication of Appendix B data.

The Commission grants the exemption to the Participants from the requirements in Section VII of the Plan to publish Pilot data collected pursuant to Appendix B of the Pilot on a monthly basis until April 28, 2017.¹⁰ The Commission has determined that this 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 because it should provide Participants with additional time to develop and submit a proposed rule change to address concerns related to confidentiality of Appendix B data.

⁸ 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").

⁹ FINRA filed a proposed rule change to provide that FINRA would publish Appendix B data starting on April 28, 2017. See File No. SR-FINRA-2017-005.

¹⁰ The Commission notes that this exemption does not modify the requirements regarding the submission of Appendix B data to the SEC.

* * *

This exemption is conditioned on the facts and representations presented in the Exemption Request. In the event any material change occurs with respect to any of the facts or representations presented, the exemption will expire and the Participants must immediately resume operating in accordance with all of the provisions in the Plan.

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority.¹¹

A handwritten signature in black ink, appearing to read 'D. S. Shillman', written in a cursive style.

David S. Shillman
Associate Director

¹¹ 17 CFR 200.30-3(a)(42).