

March 2, 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 Chicago Stock Exchange, Inc. (“CHX”), 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”),<sup>1</sup> as discussed below.<sup>2</sup>

In consultation with Commission staff, FINRA and CHX intend to submit proposed rule changes to modify the website data publication provisions for Appendix B data to provide for the aggregation of over-the-counter (“OTC”) activity for firms for which FINRA or CHX is the designated examining authority (“DEA”). In addition, FINRA intends to file a proposed rule change to implement an anonymous, grouped masking methodology for Appendix B.I., B.II. and B.IV. data related to OTC activity, including OTC Trading Centers for which CHX is the DEA.<sup>3</sup> To the extent that the provisions contained in the FINRA and CHX filings alter the data requirements in the Plan, as approved by the Commission, FINRA and CHX respectfully request that the Commission grant an exemption from those provisions of the Plan.

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

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

<sup>3</sup> See File No. SR-FINRA-2017-006.

Background

On August 25, 2014, the Participants filed the Plan<sup>4</sup> with Commission, pursuant to Section 11A of the Act<sup>5</sup> and Rule 608 of Regulation NMS thereunder.<sup>6</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>7</sup> 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.<sup>8</sup> The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>9</sup> On November 6, 2015, the SEC provided an exemption to the Participants from implementing the Pilot until October 3, 2016.<sup>10</sup> 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.<sup>11</sup> In particular, with respect to Appendix B data, on a monthly basis, the Participants and the DEA for each member of a Participant operating a Trading Center will make the required data publicly available on their websites for free and will report such data to the SEC on a disaggregated basis by Trading Center.<sup>12</sup>

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,

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<sup>4</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>5</sup> 15 U.S.C. 78k-1.

<sup>6</sup> 17 CFR 242.608.

<sup>7</sup> See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>8</sup> See Approval Order.

<sup>9</sup> Id.

<sup>10</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>11</sup> See Section VII of the Plan.

<sup>12</sup> See Section VII(A) of the Plan.

absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members.”<sup>13</sup> 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.”<sup>14</sup> FINRA and CHX are seeking exemptive relief from the specific Plan provisions set forth below, as applicable.

#### 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):<sup>15</sup>

- 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.

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 website for free. In addition, the Plan provides that the Appendix B data made publicly available will not identify the Trading Center that generated the data.<sup>16</sup> The Participants intended to publish data relating to OTC activity on a disaggregated basis by Trading Center.<sup>17</sup>

FINRA and CHX are requesting an exemption to permit the publication of data relating to OTC activity pursuant to Appendix B.I (Market Quality Statistics), B.II

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<sup>13</sup> 17 CFR 242.608(c).

<sup>14</sup> 17 CFR 242.608(e).

<sup>15</sup> See Section VII(A) of the Plan.

<sup>16</sup> See Section VII(A) of the Plan.

<sup>17</sup> See Securities Exchange Act Release No. 73511 (November 3, 2014), 79 FR 66423 (November 7, 2014) (Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis, File No. 4-657).

(Market and Marketable Limit Order Data) and B.IV (Daily Market Maker Participation Statistics) on an aggregated basis using an anonymous, grouped masking methodology. If granted, the requested relief should help to mitigate comments or concerns regarding the confidentiality of the website data with regard to OTC trading activity required to be published pursuant to the Plan, which originally was proposed to be published on a Trading Center-by-Trading Center basis using a consistent masked identifier for the duration of the data publication period.<sup>18</sup> FINRA and CHX believe that an anonymous, grouped masking methodology for the purposes of publishing the required data related to OTC activity will support the Plan's requirement that the data to be made publicly available will not identify the Trading Center that generated the data. In furtherance of this objective, the details of the methodology used to formulate the anonymous groupings will not be disclosed.<sup>19</sup>

CHX is requesting an exemption from the requirement that CHX, as the DEA for CHX members operating a Trading Center, make the required Appendix B data publicly available on its website with respect to OTC activity.<sup>20</sup> Because CHX is the DEA for a relatively small number of OTC Trading Centers, publishing the CHX activity, whether on an aggregated or a disaggregated basis, raises concerns that the identities of these Trading Centers could be determined. Thus, if the requested exemption is granted, FINRA would publish the required Appendix B.I., B.II. and B.IV. data for OTC activity with respect to Trading Centers for which FINRA or CHX is the DEA. As such, FINRA would incorporate the firms for which CHX is the DEA into the FINRA groupings and publish OTC-wide statistics for Appendix B.I, B.II and B.IV data on the FINRA website.

FINRA and CHX are requesting the above exemption from Section VII(A) of the Plan to implement an aggregated, anonymous, grouped data masking methodology for Appendix B.I., B.II. and B.IV. data related to OTC activity to respond to and mitigate confidentiality concerns raised by industry participants.<sup>21</sup> This requested exemption would support the Plan's objective that the data to be made publicly available will not identify the Trading Center that generated the data.

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<sup>18</sup> See Letters from William Hebert, Managing Director, Financial Information Forum, to Robert W. Errett, Deputy Secretary, Commission, dated December 21, 2016; and Adam C. Cooper, Senior Managing Director and Chief Legal Officer, Citadel Securities, to Brent J. Fields, Secretary, Commission, dated December 21, 2016 (together, "Comment Letters").

<sup>19</sup> A general description of the proposed aggregation method is provided in File No. SR-FINRA-2017-006.

<sup>20</sup> See Section VII(A) of the Plan.

<sup>21</sup> See Comment Letters.

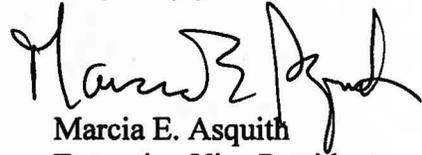
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For the reasons set forth above, FINRA and CHX respectfully request that, pursuant to Rule 608(e), the Commission grant exemptive relief to the provisions in the Plan as set forth above. FINRA and CHX therefore believe that this exemption is consistent with the public interest, the protection of investors, the maintenance of fair and orderly markets and the removal of impediments to, and 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 black ink, appearing to read "Marcia E. Asquith". The signature is fluid and cursive, with a large initial "M" and "A".

Marcia E. Asquith  
Executive Vice President,  
Board and External Relations