



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

April 28, 2017

Ms. Marcia E. Asquith  
Executive Vice President Board and External Relations  
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 Ms. Asquith:

In your letter dated March 2, 2017,<sup>1</sup> 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>2</sup> as discussed below.

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

Rule 608(c) of Regulation NMS requires the Participants<sup>3</sup> to comply with the terms of the Plan.<sup>4</sup> Rule 608(e) of Regulation NMS provides that the Commission may exempt from the

<sup>1</sup> See letter from Marcia E. Asquith, Executive Vice President Board and External Relations, FINRA, to Robert W. Errett, Deputy Secretary, U.S. Securities and Exchange Commission, dated March 2, 2017 (“Exemption Request”).

<sup>2</sup> 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.

<sup>3</sup> The Participants to the Plan are Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., Bats EDGX Exchange, Inc., Chicago Stock Exchange, Inc.,

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>5</sup>

As discussed below, the Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, is hereby granting FINRA and CHX 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 the Pilot data is published in accordance with the FINRA proposed rule change (“FINRA Proposal”) discussed below.<sup>6</sup>

#### Exemption from Website Data Publication Requirements

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.<sup>7</sup> 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. According to the

---

FINRA, 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.

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

<sup>5</sup> 17 CFR 242.608(e).

<sup>6</sup> FINRA has submitted a proposed rule change to implement an anonymous, grouped masking methodology for the publication of certain Pilot data. See Securities Exchange Act Release No. 80193 (Mar. 9, 2017), 82 FR 13901 (Mar. 15, 2017) (“FINRA Proposal”). Concurrent with the grant of this exemption, the Commission is approving the FINRA Proposal. See Securities Exchange Act Release No. 80551 (April 28, 2017). The Commission understands that CHX will submit a proposed rule change to modify its website publication obligation for those Trading Centers for which it is DEA and to provide that CHX will make the relevant Appendix B data available to FINRA for aggregation and publication pursuant to FINRA’s anonymous, grouped masking methodology.

<sup>7</sup> 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.

Exemption Request, the Participants intended to publish data relating to OTC activity on an anonymous, disaggregated basis by Trading Center.<sup>8</sup>

FINRA and CHX request an exemption to permit the publication of data relating to OTC activity pursuant to Appendix B.I (Market Quality Statistics), B. II (Market and Marketable Limit Order Data) and B.IV (Daily Market Maker Participation Statistics) (together “Appendix B data”) on an aggregated basis using an anonymous, grouped masking methodology, as described in the FINRA Proposal.<sup>9</sup>

In addition, CHX requests an exemption from the requirement that CHX, in its capacity as DEA for its members operating as Trading Centers, make Appendix B data publicly available on its website with respect to OTC activity. The CHX request would allow FINRA to include the Trading Centers for which CHX is the DEA in its anonymous, grouped masking methodology and to publish the Appendix B data related to OTC activity on the FINRA website.<sup>10</sup>

In the Exemption Request, FINRA and CHX indicated that the requested relief is intended to mitigate confidentiality concerns raised by certain market participants related to the required publication of Appendix B data related to OTC trading activity on their respective websites.<sup>11</sup> As noted in the Exemption Request, Appendix B data for OTC trading activity was originally 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. Commenters had raised concerns that the identity of a Trading Center that produced Appendix B data related to OTC activity would be discernable, even if the website publication of the data was delayed at least 120 calendar days.

In addition, the Exemption Request noted that because CHX is the DEA for a relatively small number of OTC Trading Centers, the identities of those Trading Centers could be discernable even if published on an anonymous basis on the CHX website, regardless of whether the data was published on an aggregated or disaggregated basis.

---

<sup>8</sup> See also Securities Exchange Act Release No. 73511 (Nov. 3, 2014), 79 FR 66423 (Nov. 7, 2014) (Notice of Filing of Proposed National Market System Plan to Implement a Tick Size Pilot Program on a One-Year Pilot Basis).

<sup>9</sup> See *supra* note 6.

<sup>10</sup> *Id.*

<sup>11</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. 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).

The Commission grants the exemption to FINRA and CHX from the requirements in Section VII(A) of the Plan to permit the publication of Appendix B data related to OTC trading activity on an aggregated basis using the anonymous, grouped masking methodology described in the FINRA Proposal.<sup>12</sup> 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. Specifically, the Commission believes that this exemption will allow FINRA and CHX to aggregate for publication Appendix B data related to OTC trading activity as a means to anonymize the identities of OTC Trading Centers without reducing the usefulness of this Appendix B data for analysis by the public.<sup>13</sup>

\* \* \*

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.<sup>14</sup>



David S. Shillman  
Associate Director

---

<sup>12</sup> See supra note 6. See also FINRA Rule 6191, Supplementary Material .15.

<sup>13</sup> The Commission notes that this exemption does not modify the requirements regarding the submission of Appendix B data to the SEC.

<sup>14</sup> 17 CFR 200.30-3(a)(42).