



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

March 29, 2018

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 February 1, 2018,¹ Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of itself and CBOE BZX Exchange, Inc., CBOE BYX Exchange, Inc., CBOE EDGA Exchange, Inc., CBOE 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 American LLC (collectively the “Participants”) request that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the requirement to provide to the Commission, and make publicly available, a joint assessment of the impact 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 them from the requirements of Rule 608(c) of Regulation NMS that they comply with certain provisions of Section VIII of the Plan related to the submission and publication of a joint

¹ 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 (“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.

assessment of the impact of the Pilot no later than eighteen months after the start of the Pilot Period.

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 systems.⁴

As discussed below, the Commission, pursuant to its authority under Rule 608(e) of Regulation NMS,⁵ is hereby granting the Participants an exemption from the requirement to comply with certain provisions of the Plan as required under Rule 608(c) of Regulation NMS.⁶

Exemption from Assessment Requirements

Section VIII of the Plan generally provides that no later than eighteen months after the start of the Pilot Period,⁷ the Participants must submit to the Commission and make publicly available a joint assessment of the impact of the Pilot (“Assessment”). The Assessment must be conducted using data generated during the first twelve months of the Pilot Period, or a subset of which that represents the impact of the Pilot. The Plan requires that the Assessment include:

- An assessment of the statistical and economic impact of an increase in the quoting increment on market quality;
- An assessment of the statistical and economic impact of an increase in the quoting increment on the number of Market Makers;

³ 17 CFR 242.608(c).

⁴ 17 CFR 242.608(e).

⁵ Id.

⁶ 17 CFR 242.608(c).

⁷ See Approval Order, supra note 2. In the Approval Order, the Commission stated that the Pilot was to be implemented within one year after the date of publication. On November 6, 2015, the Commission issued an order granting an exemption to Participants from implementing the Tick Size Pilot until October 3, 2016. See Securities and Exchange Act Release No. 76382, 80 FR 70284 (November 13, 2015). See also Letter to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc. from David Shillman, Associate Director, Division of Trading and Markets, dated September 13, 2016 (Exemption Letter related to the phased rollout of Pilot Securities starting on October 3, 2016 and ending on October 31, 2016). Accordingly, the Assessment is currently due to be provided to the Commission and made public no later than April 3, 2018.

- An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker participation;
- An assessment of the statistical and economic impact of an increase in the quoting increment on Market Maker profits;
- An assessment of the statistical and economic impact of an increase in the quoting increment on market transparency;
- An evaluation whether any market capitalization, daily trading volume, or other thresholds can differentiate the results of the above assessments across stocks (e.g., does the quoting increment impact differently those stocks with daily trading volume below a certain threshold);
- An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trading increment and for the joint effect of an increase in a quoting increment with the addition of a trading increment;
- An assessment of the statistical and economic impact of the above assessments for the incremental impact of a trade-at prohibition and for the joint effect of an increase in a quoting increment with the addition of a trading increment and a trade-at prohibition; and
- An assessment of any other economic issues that the Participants believe the SEC should consider in any rulemaking that may follow the Pilot.

According to the Exemption Request, the Participants seek to extend the due date for the submission and publication of the Assessment by three months to July 3, 2018. In the Exemption Request, the Participants noted that several Participants identified material errors that require correction in the Pilot data files that would be the basis of the Assessment,⁸ and, therefore, the original April 3, 2018 deadline should be extended so that corrected Pilot data can be used for analyses. The Participants noted, for example, that calculation errors relating to the number of shares of orders executed with price improvement⁹ may negatively affect the Assessment because researchers could draw an incorrect statistical inference or misinterpret the economic meaning of an increase in the

⁸ For information on the scope of the identified errors, see participant websites. See e.g., <http://www.finra.org/industry/appendix-b-data-publication>.

⁹ See also Appendix B.I.a.(2).

quoting increment on market quality. The Participants also noted that calculation errors relating to quoted size at the national best bid and national best offer could negatively affect the Assessment by causing researchers to draw an incorrect statistical inference or misinterpret the economic meaning of an increase in the quoting increment on market quality and market transparency.¹⁰

In the Exemption Request, the Participants stated that they did not believe that the approximately one month between the availability of complete and accurate Pilot data (at the end of February 2018)¹¹ and the current Assessment due date of April 3, 2018 will provide sufficient time to perform the analyses required by Section VIII of the Plan. Instead, the Participants believe that four months will be necessary to, amongst other things, aggregate the corrected data from all Participants, perform and validate the required analyses, and draft and finalize the Assessment. Thus, in order to ensure the accuracy and quality of the Assessment regarding the impact of the Pilot, the Participants requested an exemption to extend the deadline for the required submission to the Commission and publication of the Assessment to July 3, 2018.

Accurate data is essential in order to assess the impact of a wider tick size on trading, liquidity, and market quality by the Commission, the public and market participants. The Commission believes that an exemption to extend the due date of the Assessment to July 3, 2018 will facilitate the use of accurate and corrected Pilot data for the Assessment, which should result in a more accurate and meaningful analysis of the Pilot data on the impact of the Pilot. Accordingly, the Commission grants the exemption to the Participants from the requirements in Section VIII of the Plan to provide to the Commission and make publicly available a joint assessment of the impact of the Pilot using data generated during the first twelve months of the Pilot Period, or a subset of which that represents the impact of the Pilot, no later than eighteen months after the start of the Pilot Period. 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. The Commission does not anticipate granting further extensions of this deadline.

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¹⁰ See also Appendix B.I.a.(31).

¹¹ See e.g., announcements on <http://www.finra.org/industry/tick-size-pilot-program>.

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.¹²

A handwritten signature in black ink, appearing to read 'D. Shillman', with a stylized flourish at the end.

David S. Shillman,
Associate Director

¹² 17 CFR 200.30-3(a)(42).