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February 1, 2018

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 American LLC, and NYSE Arca, Inc. (collectively, “Participants”), requests that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the requirement that the Participants provide 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”)<sup>1</sup> no later than eighteen months after the start of the Pilot Period to provide the Participants an additional three months until July 3, 2018, as discussed below.<sup>2</sup>

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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.

### Background

On August 25, 2014, the Participants filed the Plan<sup>3</sup> with the Commission, pursuant to Section 11A of the Act<sup>4</sup> and Rule 608 of Regulation NMS thereunder.<sup>5</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>6</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>7</sup> The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.<sup>8</sup> On November 6, 2015, the SEC provided an exemption to the Participants from implementing the Pilot until October 3, 2016.<sup>9</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, including the Plan's data collection and publication requirements. 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>10</sup> The Plan generally requires a Trading Center or a Market Maker to collect and transmit certain data to its DEA, and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center are required under the Plan to collect certain data, which is then transmitted to the Commission. Section VII of the Plan requires that specified information collected pursuant to Appendices B and C to the Plan be made publicly available by each Participant on its respective website for free.<sup>11</sup>

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<sup>3</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

<sup>4</sup> 15 U.S.C. 78k-1.

<sup>5</sup> 17 CFR 242.608.

<sup>6</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>7</sup> See Approval Order.

<sup>8</sup> Id.

<sup>9</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>10</sup> See Section VII of the Plan. See also Appendices B and C to the Plan.

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

The Plan also requires that the Participants provide to the Commission and make publicly available a joint assessment of the impact of the Pilot (“Assessment”).<sup>12</sup> 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 Participants submit and make the Assessment publicly available no later than eighteen months after the start of the Pilot Period. The Pilot began on October 3, 2016; therefore, the Assessment is due by April 3, 2018. The Participants are seeking exemptive relief to extend the Assessment due date for three months, until July 3, 2018.

#### 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.”<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> The Participants are seeking exemptive relief from Section VIII of the Plan, as set forth below.

Section VIII of the Plan generally provides that, by April 3, 2018, the Participants must submit to the Commission and make publicly available a joint assessment of 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;

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<sup>12</sup> The Plan provides that Participants may individually submit to the SEC and make publicly available additional supplemental assessments of the impact of the Pilot.

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

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

- 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.

The above assessments and evaluation must be performed using the Tick Size data generated during the Pilot Period, which the Participants have been collecting, submitting to the SEC, and making publicly available since February 28, 2017 (in the case of Appendix C data) and August 31, 2017 (in the case of Appendix B data).<sup>15</sup>

Several Participants have identified errors in the Tick Size data files on which the Assessment's analyses and conclusions would be based.<sup>16</sup> The identified errors, some of which the Participants deem to be material, are in the process of being

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<sup>15</sup> See, e.g., Securities Exchange Act Release No. 80179 (March 8, 2017), 82 FR 13698 (March 14, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-005); Securities Exchange Act Release No. 80646 (May 10, 2017), 82 FR 22589 (May 16, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-010).

<sup>16</sup> For information on the scope of the identified errors, see participant websites. See, e.g., announcements on <http://www.finra.org/industry/tick-size-pilot-program>.

corrected by the Participants.<sup>17</sup> The Participants believe that the Assessment deadline should be extended so that corrected data can be used for the analyses. For example, calculation errors relating to the number of shares of orders executed with price improvement<sup>18</sup> may negatively affect the Assessment because researchers may draw an incorrect statistical inference or misinterpret the economic meaning of an increase in the quoting increment on market quality. In addition, calculation errors relating to quoted size at the national best bid and national best offer<sup>19</sup> may negatively affect the Assessment because researchers may draw an incorrect statistical inference or misinterpret the economic meaning of an increase in the quoting increment on market quality and market transparency. As a result, the Participants have concluded that it is not feasible to perform the Assessment until complete and accurate Tick Size data on which to base the analyses becomes available, which should occur on February 28, 2018.<sup>20</sup>

The Participants do not believe that the approximately one month between the availability of complete and accurate Tick Size data (at the end of February 2018) 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. The Participants believe that, once complete and accurate data is available, a minimum of four months will be needed to take all steps necessary to complete the Assessment, including aggregating the corrected data from all Participants, performing the required analyses, validating analyses, and drafting and finalizing the Assessment report.

In light of this, the Participants believe that extending the period by which the Participants must submit and make publicly available the Assessment would result in drawing more accurate conclusions regarding the impact of the Tick Size Pilot, and in the overall quality of the Assessment that can be produced. Thus, the Participants believe that the requested exemption to permit the Participants to submit the Assessment to the Commission and make it publicly available by July 3, 2018, is appropriate.

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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 provision 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

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<sup>17</sup> Id.

<sup>18</sup> See also Appendix B.I.a.(2).

<sup>19</sup> See also Appendix B.I.a.(31).

<sup>20</sup> See, e.g., announcements on <http://www.finra.org/industry/tick-size-pilot-program>.

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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 black ink, appearing to read "Marcia E. Asquith". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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