

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-71018)

Order Granting a Temporary Exemption Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 from the Filing Deadline Specified in Rule 613(a)(1) of the Exchange Act

December 6, 2013

Rule 613(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> requires the Financial Industry Regulatory Authority, Inc. (“FINRA”) and the eighteen registered national securities exchanges (collectively, the “SROs”) to “jointly file on or before 270 days from the date of publication of the Adopting Release [for Rule 613 of the Exchange Act<sup>2</sup>] in the Federal Register a national market system plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository as required by [the rule].” The Adopting Release for Rule 613 was published in the Federal Register on August 1, 2012,<sup>3</sup> thus requiring the national market system plan (“NMS plan”) to be filed on or before April 28, 2013.<sup>4</sup> On March 7, 2013, the Securities and Exchange Commission (“Commission”) granted a request from the SROs for a temporary exemption from this deadline until December 6, 2013.<sup>5</sup> On November 8, 2013, the SROs filed an application, pursuant to Rule 0-12 under the Exchange

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<sup>1</sup> 17 CFR 242.613(a)(1).

<sup>2</sup> 17 CFR 242.613.

<sup>3</sup> Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012) (“Adopting Release”).

<sup>4</sup> April 28, 2013, was a Sunday. Therefore, in accordance with Rule 160(a) of the Commission Rules of Practice, the deadline for filing the NMS plan was Monday, April 29, 2013.

<sup>5</sup> See Securities Exchange Act Release No. 69060, 78 FR 15771 (March 12, 2013); and letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated February 7, 2013 (“February 7, 2013 Letter”).

Act,<sup>6</sup> to request the Commission to grant a temporary exemption under Section 36 of the Exchange Act,<sup>7</sup> from the deadline specified in Rule 613(a)(1) of the Exchange Act<sup>8</sup> for submitting the NMS plan to the Commission until September 30, 2014.<sup>9</sup>

In their Current Request Letter, the SROs explain that on February 26, 2013, they published a Request for Proposal (“RFP”) to solicit bids from which they will select an entity to serve as the consolidated audit trail (“CAT”) plan processor to build, operate, administer, and maintain the CAT.<sup>10</sup> Thirty-one firms, including four distinct SRO groups, initially indicated that they planned to submit bids on the RFP.<sup>11</sup> The SROs further state in the Current Request Letter that following the publication of the RFP, potential bidders and members of the public, including broker-dealer members of the SROs, expressed interest in the process by which the SROs will review and evaluate bids, narrow down the list of bids, use those bids in formulating the CAT NMS Plan, and, ultimately, select the CAT plan processor.

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<sup>6</sup> 17 CFR 240.0-12.

<sup>7</sup> 15 U.S.C. 78mm.

<sup>8</sup> 17 CFR 242.613(a)(1).

<sup>9</sup> See Letter from Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated November 7, 2013 (the “Current Request Letter”).

<sup>10</sup> In the February 7, 2013 Letter, the SROs stated that an RFP process was necessary prior to filing an NMS plan pursuant to Rule 613 (“CAT NMS Plan”). The SROs explained their belief that such a process would ensure that potential alternative solutions for creating the consolidated audit trail could be presented to the SROs for their consideration, and would provide the SROs with information necessary to prepare a detailed cost/benefit analysis as required by Rule 613. See February 7, 2013 Letter, supra note 5.

<sup>11</sup> According to the SROs, since that time, seven firms have formally notified the SROs of their intent to withdraw as primary bidders. See Current Request Letter, supra note 9. Of the seven firms that formally notified the SROs of their intent to withdraw as primary bidders, two are SRO groups. See <http://catnmsplan.com/web/groups/catnms/@catnms/documents/appsupportdocs/p217583.pdf> (last visited November 19, 2013).

The SROs state in the Current Request Letter that they solicited views from potential bidders regarding whether they preferred to know the process the SROs will follow to review, evaluate, and select a bidder in advance of submitting their bids and whether that process could influence either a decision regarding whether to submit a bid or the contents of a bid. The SROs represent that many potential bidders indicated that knowing the process by which the SROs will choose the plan processor is important to finalizing their bids. According to the SROs, the potential bidders also generally expressed the view that providing bidders with four weeks between approval of a selection process and the submission deadline for the bids would be an appropriate timeframe to allow bidders to make any changes to their bids in light of the approved evaluation and selection process. Based on this feedback, the SROs filed with the Commission an NMS plan to govern the SROs' process for the selection of a CAT plan processor, and for mitigating conflicts of interest that might arise in the process (the "Selection NMS Plan").<sup>12</sup>

In the Current Request Letter, the SROs state that a temporary exemption is necessary and appropriate regardless of whether the Commission approves the Selection NMS Plan. Specifically, the SROs note that if the Selection NMS Plan is approved, they believe it will take "approximately seven months from the receipt of the bids to review and evaluate the bids, perform the in-depth and thorough analysis . . . required by Rule 613, and draft the CAT NMS plan for submission to the SEC."<sup>13</sup> The SROs further state that "[b]ecause the content of the bids is critical to the analysis needed to draft the CAT NMS Plan, the SROs estimate that seven months following the receipt of bids is necessary to ensure that they can fully address the considerations enumerated in Rule 613, including a discussion of the costs and benefits of not

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<sup>12</sup> The Commission published the Selection NMS Plan for notice and comment. See Securities Exchange Act Release No. 70892 (November 15, 2013), 78 FR 66910 (November 21, 2013).

<sup>13</sup> See Current Request Letter, supra note 9.

only the proposed solution(s) but also of the alternative solutions considered but not proposed as the solution in the CAT NMS Plan, so that the Commission and the public have sufficiently detailed information to carefully consider all aspects of the CAT NMS Plan ultimately submitted by the SROs.”<sup>14</sup> If the Selection NMS Plan is not approved, the SROs explain that they will need the temporary exemption to allow bidders additional time to finalize their bids, and allow the SROs additional time to develop an alternative process for evaluating the bids, developing the CAT NMS Plan, and selecting the CAT plan processor.<sup>15</sup>

Section 36 of the Exchange Act<sup>16</sup> authorizes the Commission, by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The Commission finds that it is appropriate in the public interest, and is consistent with the protection of investors, to grant the SROs a temporary exemption from the deadline for filing the CAT NMS Plan contained in Rule 613(a)(1) until September 30, 2014. The Commission believes that granting the exemption is appropriate in light of the need for the SROs to establish a deadline for finalizing and submitting bids in response to the RFP; to evaluate the bids submitted and select the CAT Plan Processor under the Selection NMS Plan, if the Selection NMS Plan is approved by the Commission, or an alternative process if the Selection NMS Plan is not approved by the Commission; and to draft the CAT NMS Plan.

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<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> 15 U.S.C. 78mm.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 36 of the Exchange Act,<sup>17</sup> that the SROs are temporarily exempted from the deadline for submitting the NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository contained in Rule 613(a)(1)<sup>18</sup> until September 30, 2014.

By the Commission.

Elizabeth M. Murphy  
Secretary

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<sup>17</sup> 15 U.S.C. 78mm.

<sup>18</sup> 17 CFR 242.613(a)(1).