

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-76382; File No. 4-657)

November 6, 2015

Order Granting Exemption from Compliance with the National Market System Plan to Implement a Tick Size Pilot Program

I. Introduction

Pursuant to Rule 608(e)¹ under the Securities Exchange Act of 1934 (“Exchange Act”), the Securities and Exchange Commission (“Commission”) may exempt from compliance with the provisions of Rule 608, 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. As discussed below, the Commission is exercising its authority under Rule 608(e) to exempt BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc. (“FINRA”), NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC (“NYSE”), NYSE MKT LLC, and NYSE Arca, Inc., (collectively “SROs” or “Participants”), from implementing the Plan to Implement a Tick Size Pilot Program (“Tick Size Pilot”) until October 3, 2016.

¹ 17 CFR 242.608(e)

II. Background

On May 6, 2015, the Commission approved the Tick Size Pilot and provided that the Tick Size Pilot be implemented within one year after the publication of the order.² The Tick Size Pilot will have a two-year duration (“Pilot Period”),³ and will include exchange-listed common stocks that have the following characteristics: (1) a market capitalization of less than \$3 billion; (2) a closing price of at least \$2 per share on the last day of the measurement period (and a closing price of not less than \$1.50 per share during the measurement period); (3) a consolidated average daily volume of one million shares or less; and (4) a volume-weighted average price of at least \$2 per share (“Pilot Securities”).

The Pilot Securities will be divided into one control group and three test groups. There will be 400 Pilot Securities per test group and the remaining Pilot Securities will be assigned to the control group. Test Group One Pilot Securities will quote in \$0.05 per share increments and will trade at any currently permitted increment. Test Group Two Pilot Securities will quote in \$0.05 per share increments like those in Test Group One, but will only be permitted to trade in \$0.05 per share increments, subject to certain exceptions.⁴ Finally, Test Group Three Pilot Securities will quote in \$0.05 per share increments and will trade in \$0.05 per share increments consistent with Test Group Two, and in addition be subject to a Trade-At Prohibition, which

² Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015).

³ The term Pilot Period means the operative period of the Tick Size Pilot, lasting two years from the date of implementation. See Section I.U of the Tick Size Pilot at 80 FR 27547.

⁴ First, executions will be able to at the midpoint between the national (or protected) best bid and the national (or protected) best offer; second, orders involving retail investor orders will be able to trade with price improvement of at least \$0.005 per share; and third, negotiated trades (such as a volume-weighted average price trade or a time-weighted average price trade) will be able to trade outside of the \$0.05 increment.

would generally prevent price matching by a trading center that is not displaying a quotation at the price of the best protected quotation, unless an exception applies. Pilot Securities in the control group would continue to quote and trade in the pricing increments that are currently permitted.

Pursuant to the Tick Size Pilot, Participants will collect data reflecting a variety of market quality metrics with respect to the Pilot Securities and transmit such data to the Commission. The collected data will be publicly available in an aggregated form. In addition, the Participants are required to conduct, and provide the Commission with, a publicly-available impact assessment.

III. Discussion

As discussed in the Approval Order,⁵ several actions need to occur prior to the implementation of the Tick Size Pilot, including: (1) the development and testing of applicable trading and compliance systems, (2) the filing and approval of SRO rules related to the Tick Size Pilot's quoting and trading requirements, and (3) the development and implementation of the written policies and procedures by Participants and their members that are reasonably designed to comply with the applicable quoting and trading increments. In addition, the Participants must develop appropriate policies and procedures for collecting and reporting to the Commission the requisite data in connection with the Tick Size Pilot, including the filing and approval of SRO rules requiring the collection and reporting of data from certain member firms. Data is to be collected by the Participants for periods beginning six months prior to the Pilot Period⁶. To date, the requisite SRO rule proposals have not been filed or approved by the Commission, and

⁵ 80 FR at 27545.

⁶ See Sections IV and VII of the Tick Size Pilot at 80 FR at 27548 and 27552-53.

there has not been an opportunity for the Participants and their members to develop and test applicable trading and compliance systems.⁷

Accordingly, the Commission believes additional time is needed for the Participants and their members to complete their preparations for implementation of the Tick Size Pilot. The Commission believes that extending the implementation date by approximately five months, to October 3, 2016, is sufficient to allow for a smooth yet timely implementation of the Tick Size Pilot, including the approval of applicable SRO rules and the development and testing of new compliance systems.⁸

Therefore, the Commission believes that it is necessary and appropriate to issue an exemption to extend the date by which the Participants must implement the Tick Size Pilot until October 3, 2016. The Commission has determined that such an exemption is consistent with the

⁷ The Commission notes that the Participants anticipate filing model data collection rule proposals with the Commission no later than November 13, 2015. See Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015. In addition, the Commission notes that the Participants issued technical specifications and FAQs related to the data collection requirements on October 12, 2015.

⁸ The Commission has received requests to extend the implementation date of the Tick Size Pilot or its data collection requirements for various periods. See Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Stephen Luparello, Director, Division of Trading and Markets, Commission, dated August 31, 2015 (requesting the data collection period be extended until at least three months after the requisite SRO rules are approved by the Commission and related interpretive guidance is published); Letter from Mary Lou Von Kaenel, Managing Director, Financial Information Forum, to Stephen Luparello, Director, Division of Trading and Markets, Commission, dated September 24, 2015 (requesting the data collection period be extended a minimum of six months); and Letter from Brendon J. Weiss, Co-Head, Government Affairs, Intercontinental Exchange/NYSE, to Brent J. Fields, Secretary, Commission, dated November 4, 2015 (requesting the data collection period be extended until six months after the requisite SRO rules are approved, and the implementation data of the Tick Size Pilot until six months thereafter).

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.

IV. Conclusion

IT IS HEREBY ORDERED, pursuant to Rule 608(e) of Exchange Act,⁹ that the Participants are exempt from implementing the Tick Size Pilot until October 3, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Robert W. Errett
Deputy Secretary

⁹ 17 CFR 242.608(e).

¹⁰ 17 CFR 200.30-3(a)(42).