FINRA
Financial Industry Regulatory Authority

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August 26, 2016

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, National Stock Exchange, Inc., New York Stock Exchange LLC ("NYSE"), NYSE MKT LLC, and NYSE Arca, Inc. (collectively, "Participants"), requests that the Securities and Exchange Commission ("Commission" or "SEC") grant an exemption from the data collection requirements in the National Market System Plan to Implement a Tick Size Pilot Program ("Plan" or "Pilot"), as discussed below. Capitalized terms used herein, but not otherwise defined, shall have the meanings ascribed to them in the Plan.

In consultation with the Commission, the Participants intend to submit proposed rule changes to modify certain aspects of the Plan's data collection requirements ("Data Collection Modification Rule Filings").[1] To the extent that the provisions contained in the Data Collection Modification Rule Filings alter the data collection requirements in the Plan, as approved by the Commission, the Participants respectfully request that the Commission grant an exemption from those provisions of

[1] See, e.g., File No. SR-FINRA-2016-035 (August 26, 2016) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend FINRA Rule 6191 Relating to the Data Collection Requirements of the Regulation NMS Plan to Implement A Tick Size Pilot Program).

the Plan. First, the Participants request exemptive relief relating to the share and trade participation calculations of Appendix B.IV.b and Appendix B.IV.c, respectively. Second, the Participants request exemptive relief relating to the cross-quote share (trade) participation and inside-the-quote share (trade) participation calculations of Appendix B.IV.d and Appendix B.IV.e, respectively. Third, the Participants request exemptive relief so that they may separately categorize unexecuted Immediate or Cancel orders for purposes of Appendix B.I.a(21) through B.I.a(27). The Participants believe that the modifications to the requirements set forth in the Plan sought to be implemented in the Data Collection Modification Rule Filings represent more appropriate methods of categorization and calculation, and will therefore more efficiently and accurately facilitate the objectives of the Pilot. Therefore, the Participants believe that the proposed exemptive relief is consistent with the public interest, the protection of investors, and the maintenance of fair and orderly markets.

Background

On August 25, 2014, the Participants filed with the Commission, pursuant to Section 11A of the Act[2] and Rule 608 of Regulation NMS thereunder,[3] the Plan to Implement a Tick Size Pilot Program.[4] The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.[5] 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.[6]

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.

The Plan provides for the creation of a group of Pilot Securities, which shall be placed in a control group and three separate test groups, with each subject to varying

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2 15 U.S.C. 78k-1.

3 17 CFR 242.608.

4 See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., to Secretary, Commission, dated August 25, 2014.

5 See Securities Exchange Act Release No 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

6 See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) ("Approval Order").

quoting and trading increments. Pilot Securities in the control group will be quoted at the current tick size increment of $0.01 per share and will trade at the currently permitted increments. Pilot Securities in the first test group will be quoted in $0.05 minimum increments but will continue to trade at any price increment that is currently permitted.[7] Pilot Securities in the second test group ("Test Group Two") will be quoted in $0.05 minimum increments and will trade at $0.05 minimum increments subject to a midpoint exception, a retail investor order exception, and a negotiated trade exception.[8] Pilot Securities in the third test group ("Test Group Three") will be subject to the same quoting and trading increments as Test Group Two, and also will be subject to the "Trade-at" requirement to prevent price matching by a market participant that is not displaying at the price of a Trading Center's "Best Protected Bid" or "Best Protected Offer," unless an enumerated exception applies.[9] In addition to the exceptions provided under Test Group Two, an exception for Block Size orders and exceptions that mirror those under Rule 611 of Regulation NMS[10] will apply to the Trade-at requirement.

The Plan also requires a Trading Center[11] or a Market Maker[12] to collect and transmit certain data to its designated examining authority ("DEA"), and requires DEAs to transmit this data to the Commission. Participants that operate a Trading Center also are required under the Plan to collect certain data, which is then transmitted directly to the Commission. With respect to Trading Centers, Appendix B.I to the Plan (Market Quality Statistics) requires a Trading Center to submit to the Participant that is its DEA a variety of market quality statistics. Appendix B.II to the

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7 See Section VI(B) of the Plan.

8 See Section VI(C) of the Plan.

9 See Section VI(D) of the Plan.

10 17 CFR 242.611.

11 The Plan incorporates the definition of a "Trading Center" from Rule 600(b)(78) of Regulation NMS. Regulation NMS defines a "Trading Center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." See 17 CFR 242.600(b).

12 The Plan defines a Market Maker as "a dealer registered with any self-regulatory organization, in accordance with the rules thereof, as (i) a market maker or (ii) a liquidity provider with an obligation to maintain continuous, two-sided trading interest."

Plan (Market and Marketable Limit Order Data) requires a Trading Center to submit information to its DEA relating to market orders and marketable limit orders, including the time of order receipt, order type, the order size, and the National Best Bid and National Best Offer quoted price.

With respect to Market Makers, Appendix B.III requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics. Appendix B.IV requires a Participant to collect data related to Market Maker participation with respect to each Market Maker engaging in trading activity on a Trading Center operated by the Participant. Appendix C.I requires a Participant to collect data related to Market Maker profitability from each Market Maker for which it is the DEA. Appendix C.II requires the Participant, as DEA, to aggregate the Appendix C.I data, and to transmit this data to the Commission.

The Commission approved the Pilot on a two-year basis, with implementation to begin no later than May 6, 2016.[13] On November 6, 2015, the SEC provided an exemption to the Participants from implementing the pilot until October 3, 2016.[14] As set forth in Appendices B and C to the Plan, data shall be provided for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period. Under the revised Pilot implementation date, the pre-Pilot data collection period commenced April 4, 2016.

Items I and II of Appendix B require a Trading Center that is not operated by a Participant to submit the data set forth in those items to its DEA on a monthly basis, and the DEA to transmit the data on a disaggregated basis within 30 calendar days following month end to the SEC.[15] Item III of Appendix B requires a Participant that is a national securities exchange to collect daily Market Maker Registration statistics, which are reported to the Commission. Item IV of Appendix B requires a Participant that operates a Trading Center to collect daily Market Maker participation statistics relating to Market Makers engaging in trading activity on that Trading Center, which also are reported to the Commission. Appendix C requires a Market Maker to transmit Appendix C.I data to its DEA on a monthly basis, with the DEA providing this information to the SEC within 30 calendar days following month end. A DEA also is required to submit aggregated Market Maker profitability data to the SEC on an aggregated basis within 30 calendar days following month end.

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13 See Approval Order at 27533 and 27545.

14 See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015) (File No. 4-657).

15 For a Trading Center that is operated by a Participant, Appendices B.I and B.II require that Participant to gather data for the period beginning six months prior to the Pilot Period and submit this data to the SEC.

In approving the Plan, the Commission noted that the Trading Center data reporting requirements would facilitate an analysis of the effects of the Pilot on liquidity (e.g., transaction costs by order size), execution quality (e.g., speed of order executions), market maker activity, competition between trading venues (e.g., routing frequency of market orders), transparency (e.g., choice between displayed and hidden orders), and market dynamics (e.g., rates and speed of order cancellations).[16] The Commission noted that Market Maker profitability data would assist the Commission in evaluating the effect, if any, of a widened tick increment on market marker profits and any corresponding changes in the liquidity of small-capitalization securities.[17]

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."[18] 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."[19] The Participants are seeking exemptive relief from the specific Plan provisions set forth below.

Share and Trade Participation Calculations

Item IV of Appendix B of the Plan requires that a Participant that operates a Trading Center collect daily Market Maker participation statistics, including share participation (B.IV.b) and trade participation (B.IV.c). Appendix B.IV.b provides that share participation is the number of shares purchased or sold by Market Makers in a principal trade, not including riskless principal. Appendix B.IV.c provides that trade participation is the number of purchases and sales by Market Makers in a principal trade, not including riskless principal. Appendix B.IV.b and B.IV.c of the Plan state that, when aggregating across Market Makers, share (trade) participation will be a

16 See Approval Order at 27543.

17 Id.

18 17 CFR 242.608(c).

19 17 CFR 242.608(e).

share (trade)-weighted average per Market Maker. The Participants believe that it is more appropriate to calculate a Market Maker's share (trade) participation by providing the total count of shares or trades, as applicable, rather than weighted averages. The Participants therefore seek exemptive relief from the requirement that share and trade participation be calculated using a share-weighted average and trade-weighted average, respectively, and propose instead to calculate share (trade) participation, for purposes of Appendix B.IV.b and B.IV.c, based on a total count.

Quote-Related Calculations

Item IV of Appendix B of the Plan also requires that a Participant that operates a Trading Center collect cross-quote share (trade) participation (B.IV.d) and inside-the-quote share (trade) participation (B.IV.e). Appendix B.IV.d provides that cross-quote share (trade) participation is the number of shares purchased (the number of purchases) at or above the NBO and the number of shares sold (the number of sales) at or below the NBB at the time of trade. Appendix B.IV.e provides that inside-the-quote share (trade) participation is the number of shares purchased (the number of purchases) and the number of shares sold (the number of sales) between the NBBO at the time of trade. The Participants believe that it is appropriate to calculate all quote participation (including cross-quote share (trade) participation and inside-the-quote share (trade) participation) solely by reference to the NBBO, NBB or NBO, as applicable, in effect immediately prior to the trade. The Participants therefore seek exemptive relief from the requirements of Appendix B.IV.d and B.IV.e that cross-quote share (trade) participation and inside-the-quote share (trade) participation calculations be made with reference to the NBBO, NBB or NBO, as applicable, at the time of the trade, and propose instead these calculation be made with reference to the NBBO, NBB or NBO, as applicable, in effect immediately prior to the trade.

Categorization of Immediate or Cancel Orders

Item I of Appendix B of the Plan sets forth categories of daily market quality statistics required to be collected. Items B.I.a(21) through B.I.a(27) of Appendix B relate to reporting the cumulative number of shares of cancelled orders during categories of specified durations of time after order receipt of the order that was cancelled. The Participants believe that, for purposes of reporting cancelled orders, it is appropriate to categorize unexecuted Immediate or Cancel orders separately as one bucket, irrespective of the duration of time after order receipt, i.e., without a time increment. The Participants believe that this would better allow for differentiation of orders cancelled subsequent to entry from those where the customer's intent prior order entry was to cancel the order if no execution could be immediately obtained. The Participants therefore seek exemptive relief from the requirements of Appendix B.Ia(21) through B.I.a(27) relating to the reporting of the cumulative number of shares of cancelled orders during a specified duration of time after order receipt of the order that was cancelled, to permit the participants to categorize unexecuted Immediate or

Cancel orders separately as one bucket irrespective of the duration of time after order receipt.

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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 provisions 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 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,

Marcia E. Asquith

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Corporate Secretary