



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 28, 2019

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 March 20, 2019,¹ FINRA on behalf of itself and Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Investors Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, the Nasdaq Stock Market LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., NYSE National, Inc., and New York Stock Exchange LLC (collectively, “Participants”²) request an exemption from certain provisions of the Plan to Implement a Tick Size Pilot Program (“Tick Size Pilot” or “Plan”)³ in order to terminate the post-Pilot Period data collection and publication requirements of the Tick Size Pilot at the end of

¹ See letter from Marcia E. Asquith, Executive Vice President, Board and External Relations, Financial Industry Regulatory Authority (“FINRA”), to Eduardo A. Aleman, Deputy Secretary, Securities and Exchange Commission (“Commission”) dated March 20, 2019 (“Exemption Request”).

² Capitalized terms not otherwise defined herein have the same meaning as they are defined in the Plan.

³ See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). See also, Securities and Exchange Act Release No. 76382 (November 6, 2015) (File No. 4-657), 80 FR 70284 (File No. 4-657) (November 13, 2015), which extended the date of implementation from May 6, 2016 to October 3, 2016. On September 13, 2016, the Commission, pursuant to delegated authority, issued an exemption to permit the Pilot Period to begin with a phased rollout of Pilot Securities starting on October 3, 2016 and ending on October 31, 2016. See Letter to Eric Swanson, EVP, General Counsel and Secretary, Bats Global Markets, Inc., from David Shillman, Associate Director, Division of Trading and Markets (“Division”), Commission, dated September 13, 2016.

trading on Friday, March 29, 2019, instead of at the end of trading on Tuesday, April 2, 2019.

Section VII of the Tick Size Pilot (Collection of Pilot Data) generally provides that each Participant must comply, and enforce compliance by its member organizations, as applicable, with the data collection and publication requirements set forth in Appendix B (Data Collected by Participants and Trading Centers) and Appendix C (Data Collected by Market Makers) of the Plan for dates starting six months prior to the Pilot Period through six months after the end of the Pilot Period.⁴ The Tick Size Pilot date of implementation was October 3, 2016, and the Pilot Period was scheduled to end on October 2, 2018.⁵ On September 10, 2018, the Commission, pursuant to delegated authority, issued an exemption to permit the quoting and trading requirements of the Tick Size Pilot to terminate on September 28, 2018 rather than October 2, 2018.⁶ Accordingly, while the quoting and trading requirements ended on September 28, 2018, the post-Pilot Period data collection and publication requirements currently remains scheduled to end at the end of trading on April 2, 2019.

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 NMS⁷ that they comply with, and enforce compliance by their members with, Section VII and Appendices B and C of the Tick Size Pilot, which set forth various post-Pilot Period data collection and publication requirements for Participants, Trading Centers, and Market Makers, after the end of trading on Friday, March 29, 2019. 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 system.⁸

The Participants have requested this exemption to end the post-Pilot Period data collection requirements set forth in Section VII of the Tick Size Pilot after the end of trading on March 29, 2019. The Participants have indicated that terminating the post-

⁴ See Section VII of the Plan.

⁵ See *supra* note 3.

⁶ See Letter to John Ramsay, Chief Market Policy Officer, IEX Group, Inc., from David S. Shillman, Associate Director, Division, Commission, dated September 10, 2018 (“September 2018 Exemption”).

⁷ Rule 608(c) of Regulation NMS requires the Participants to comply with the terms of the Tick Size Pilot. Further, Rule 608(c) of Regulation NMS requires each Participant to enforce compliance with the Tick Size Pilot by its members and persons associated with its members. 17 CFR 242.608(c).

⁸ 17 CFR 242.608(e).

Pilot Period data collection and publication requirements after the end of trading on March 29, 2019 would be less burdensome as Participants transition away from the Tick Size Pilot requirements. In particular, the Participants noted that the systems currently in place to meet the Plan's monthly requirements are programmed to run the required data and statistics in relation to a month's volume of data and related timelines. The Participants noted that, absent the requested relief, the Participants would be required to make programming changes and update existing parameters to enable to Participants to generate a monthly file for the month of April 2019 that would include statistics for only two trading days, which would add costs and complexity to the end of the Pilot. The Participants represent the requested exemption will not affect the goal of the Tick Size Pilot 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.

The Commission, pursuant to its authority under Rule 608(c) of Regulation NMS, hereby grants each Participant a limited exemption from the requirement to comply with, and enforce compliance by its members with, Section VII and Appendices B and C of the Tick Size Pilot, after the end of trading on March 29, 2019. This limited exemption should ease the compliance burden on Participants as they transition away from the Tick Size Pilot requirements, without negatively impacting the utility of the Tick Size Pilot data or harming investors. Given that the September 2018 Exemption effectively shortened the Pilot by two trading days, this exemption simply conforms the post-Pilot period to the shortened Pilot, and a full six months of post-Pilot data will still be collected and published as originally contemplated. For these reasons, 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 a national market system.

* * *

This exemption is conditioned on the facts and representations presented in your letter.

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority.⁹



David S. Shillman
Associate Director

⁹ 17 CFR 200.30-3(a)(42).