



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

April 28, 2017

Ms. Jennifer Piorko Mitchell  
Vice President and Deputy Corporate Secretary  
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. Mitchell,

In your letter dated April 27, 2017,<sup>1</sup> 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, New York Stock Exchange LLC, NYSE Arca, Inc., NYSE National, Inc. and NYSE MKT LLC (collectively the “Participants”) request that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the data publication requirements of the National Market System Plan to Implement a Tick Size Pilot Program (“Plan” or “Pilot”),<sup>2</sup> as discussed below.

Specifically, the Participants request that the Commission, pursuant to Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 (“Exchange Act”), exempt the Participants from the requirements of Rule 608(c) of Regulation NMS that they comply with certain provisions of Section VII of the Plan that addresses, among other things, the collection and publication of Pilot data.

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<sup>1</sup> See letter from Jennifer Piorko Mitchell, Vice President and Deputy Corporate Secretary, Board and External Relations, FINRA, to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission, dated April 27, 2017 (“Exemption Request”).

<sup>2</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (“Approval Order”). See also Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015). Unless otherwise specified, capitalized terms are the defined terms of the Plan.

Rule 608(c) of Regulation NMS requires the Participants to comply with the terms of the Plan.<sup>3</sup> 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.<sup>4</sup>

As discussed below, the Commission, pursuant to its authority under Rule 608(e) of Regulation NMS, is hereby granting each Participant a limited exemption from the requirement to comply with certain provisions of the Plan as required under Rule 608(c) of Regulation NMS so long as each Participant submits proposed rule changes to reflect the changes described below.

#### Exemption from Publishing Certain Pilot Data on a Monthly Basis

Section VII(A) (Collection of Trading Center Pilot Data) of the Plan provides that the Participants must collect certain data with respect to Pilot Securities, as set forth in Appendix B.<sup>5</sup> Section VII(A) of the Plan further provides, among other things, that on a monthly basis, each Participant and the Designated Examining Authority (“DEA”) for each member of a Participant operating a Trading Center will, as applicable, make the specified data publicly available on its respective website for free. In addition, Section VII(A) of the Plan provides that the data made publicly available will not identify the Trading Center that generated the data.

The Commission previously provided exemptive relief, and the Participants amended their rules, as appropriate, to delay the first monthly website publication of Appendices B and C data until February 28, 2017.<sup>6</sup> The delay of the first monthly publication of data purposefully created a time lag between the production and public availability of the data in order to mitigate the confidentiality concerns raised by certain market participants.<sup>7</sup>

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<sup>3</sup> 17 CFR 242.608(c).

<sup>4</sup> 17 CFR 242.608(e).

<sup>5</sup> Data specified in Appendix B includes Daily market quality statistics of orders by security, order type, original order size (as observed by the Trading Center), hidden status (as applicable), and coverage under Rule 605 of Regulation NMS; Specified data regarding market orders and marketable limit orders; Daily number of registered Market Makers; and Daily Market Maker Participation statistics.

<sup>6</sup> Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Senior Vice President Corporate Secretary, FINRA, dated November 30, 2016. Publication of Appendix B and C data was originally scheduled to start on November 30, 2016.

<sup>7</sup> In addition, the Participants amended their rules to provide that they would publish Pilot data on their websites within 120 calendar days following month end. See e.g. Securities Exchange Act Release No. 79424 (November 29, 2016), 81 FR 87603 (December 5, 2016).

Thereafter, the Participants implemented the publication of Appendix C data on February 28, 2017.<sup>8</sup> The Commission further provided exemptive relief, and the Participants amended their rules, as appropriate, to delay the first monthly website publication of Appendix B data until April 28, 2017.<sup>9</sup> This further delay of the website publication of Appendix B data provided the Participants time to assess a means of addressing the confidentiality concerns raised in connection with the publication of such data.

To this end, FINRA submitted a proposed rule change to implement an aggregated anonymous, grouped masking methodology for Appendix B data related to over-the-counter trading activity, which the Commission approved on April 28, 2017.<sup>10</sup> FINRA noted in its filing that, if approved, it would need further time to implement the necessary systems changes for the anonymous, grouped masking methodology.<sup>11</sup>

In the Exemption Request, the Participants state that an exemption from Section VII(A) of the Plan would allow them to adopt rule amendments, as necessary, to further delay website publication of Appendix B data until August 31, 2017.<sup>12</sup> In addition, the Participants note that, if the requested exemptive relief is granted, the Participants would, by August 31, 2017, publish the required Appendix B data for the Pre-Pilot Period through April 30, 2017. Thereafter, Appendix B data for a given month would be published within 120 calendar days following month end. For example, Appendix B data for May 2017 would be made available on Participant websites by September 28, 2017, and June 2017 data would be made available on Participant websites by October 28, 2017. The Participants state that delaying the publication of Appendix B data on Participant websites will continue to support the Plan's objective that the publicly available data not identify the Trading Center that generated the data.

The Commission hereby grants the exemption to the Participants from the requirements in Section VII of the Plan to publish Pilot data collected pursuant to Appendix B of the Pilot on a

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<sup>8</sup> Appendix C includes data related to Market Maker profitability.

<sup>9</sup> Securities Exchange Act Release No. 80179 (March 8, 2017), 82 FR 13698 (March 14, 2017) ("Appendix B Data Publication Delay Filing"). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Robert L.D. Colby, Executive Vice President and Chief Legal Officer, FINRA, dated February 28, 2017 ("Appendix B Data Publication Delay Exemption").

<sup>10</sup> Securities Exchange Act Release No. 80551 (April 28, 2017) ("Masking Methodology Order"). See also Letter from David S. Shillman, Associate Director, Division of Trading and Markets, Commission, to Marcia E. Asquith, Executive Vice President, Board and External Relations, FINRA, dated April 28, 2017 ("Masking Methodology Exemption").

<sup>11</sup> Securities Exchange Act Release No. 80193 (March 9, 2017), 82 FR 13901 (March 15, 2017) ("Masking Methodology Notice").

<sup>12</sup> See e.g., SR-FINRA 2017-010; SR-NYSE-2017-19; SR-NYSEArca-2017-49.

monthly basis until August 31, 2017.<sup>13</sup> The Commission has determined 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 the perfection of the mechanisms of, a national market system because it should provide FINRA with additional time to develop the necessary systems changes to implement the anonymous, grouped masking methodology for Appendix B data related to OTC trading activity. In addition, the Commission believes that it is consistent with the public interest that the timing for publication of Appendix B data is the same for all Participants in order to enhance the consistency and usefulness of the data.

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This exemption is conditioned on the facts and representations presented in the Exemption Request. In the event any material change occurs with respect to any of the facts or representations presented, the exemption will expire and the Participants must immediately resume operating in accordance with all of the provisions in the Plan.

For the Commission,  
by the Division of Trading and Markets,  
pursuant to delegated authority.<sup>14</sup>



David S. Shillman  
Associate Director

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<sup>13</sup> The Commission notes that this exemption does not modify the requirements regarding the submission of Appendix B data to the SEC.

<sup>14</sup> 17 CFR 200.30-3(a)(42).