



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

August 30, 2016

Ms. Marcia E. Asquith
Senior Vice President and Corporate Secretary
Financial Industry Regulatory Authority, Inc.
1735 K Street NW
Washington, DC 20006-1506

RE: Exemption Under Rule 608(e) of Regulation NMS under the Securities Exchange Act of 1934 from Certain Provision of the “Plan to Implement a Tick Size Pilot Program”

Dear Ms. Asquith:

In your letter dated August 26, 2016,¹ the 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 MKT LLC, and NYSE Arca, Inc. (collectively the “Participants”), requests an exemption from certain data collection requirements set forth in the Plan to Implement a Tick Size Pilot Program (“Tick Size Pilot Plan”).²

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 to comply with, and enforce compliance by their members with: (1) Appendix B.IV.b and Appendix B.IV.c relating to share and trade participation calculation; (2) Appendix B.IV.d and Appendix B.IV.e. with respect to cross-quote share (trade) participation and inside-the-quote share (trade) participation calculation; and (3) Appendix B.I.a(21) through (27) for unexecuted immediate or cancel orders. The Exemption Request noted

¹ See Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, FINRA, to Robert W. Errett, Deputy Secretary, U.S. Securities and Exchange Commission, dated August 26, 2016 (“Exemption Request”).

² See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

that the Participants intend to submit proposed rule changes to modify certain aspects of the Tick Size Pilot Plan's data collection requirements.

Rule 608(c) of Regulation NMS requires that the Participants comply with the terms of the Tick Size Pilot Plan, and requires each Participant to enforce compliance with the Tick Size Pilot Plan by its members and persons associated with its members. 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.³

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 Tick Size Pilot 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.

I. Exemption from the Requirement to Calculate share and trade participation calculation in Appendix B.IV.b and Appendix B.IV.c

Appendix B.IV to the Tick Size Pilot Plan requires each Participant to collect daily Market Maker participation statistics with respect to each Market Maker engaging in trading activity on the trading center operated by the Participant. With respect to each Market Maker, the Participant will collect such statistics irrespective of whether the Market Maker is registered with the Participant.

Appendix B.IV.b defines share participation as the number of shares purchased or sold by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, share participation will be an executed share-weighted average per Market Maker. Appendix B.IV.c defines trade participation as the number of purchases and sales by Market Makers in a principal trade, not including riskless principal. When aggregating across Market Makers, trade participation will be a trade-weighted average per Market Maker. The Participants expressed belief that it is more appropriate to calculate a Market Maker's share (trade) participation by providing the total count of shares or trades, rather than weighted averages.

The Commission grants the exemption to each Participant from the requirements of Appendix B.IV.b and Appendix B.IV.c to calculate the aggregate share (trade) participation by weighted average per Market Maker, so long as each Participant calculate a Market Maker's share (trade) participation by providing the total count of

³ 17 CFR 242.608(e).

shares or trades, rather than the weighted average.⁴ The Commission believes 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 a national market system, because reporting share (trade) participation by total count should provide more useful data.

II. Appendix B.IV.d and Appendix B.IV.e. with respect to cross-quote share (trade) participation and inside-the-quote share (trade) participation calculation

Appendix B.IV.d defines cross-quote share (trade) participation as 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 the trade. Appendix B.IV.e. defines inside-the-quote share (trade) participation as 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 the trade. The Participants expressed belief that it is appropriate to calculate all quote participation by reference to the NBBO, NBB or NBO, as applicable, in effect immediately prior to the trade.

The Commission grants the exemption to each Participant from the requirements of Appendix B.IV.d and Appendix B.IV.e to calculate the cross-quote and inside-the-quote share (trade) participation at the time of the trade, so long as each Participant calculates these participation numbers by reference to the NBBO, NBB or NBO, as applicable, immediately prior to the trade.⁵ The Commission believes 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 a national market system, because reporting cross-quote and inside-the-quote share (trade) participation with reference to the NBBO, NBB or NBO, as applicable, immediately prior to the trade should provide more useful data.

III. Appendix B.I.a(21) through (27) on unexecuted immediate or cancel orders

Appendix B.I sets forth categories of daily market quality statistics each Participant must collect and report. Appendix B.I.a(21) through (27) requires the reporting of the cumulative number of shares cancelled during categories of specified durations of time after the time of order receipt. The Participants expressed belief that it is appropriate to categorize unexecuted immediate or cancel orders separately as one bucket, to allow for differentiation of orders cancelled subsequent to entry from those where the customer's intent prior to order entry was to cancel the order if no execution could be immediately obtained.

⁴ See, e.g., FINRA Rule 6191, Supplementary Material .11.

⁵ See, e.g., FINRA Rule 6191 Supplementary Material .11.

The Commission grants the exemption to each Participant from the requirements of Appendix B.I.a(21) through (27) to report the cumulative number of shares of orders cancelled after the time of order receipt for immediate or cancel orders, so long as each Participant separately categorize these orders.⁶ The Commission believes 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 a national market system, because reporting immediate or cancel orders separately should allow for more precise data on other orders that are cancelled.

* * *

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

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority⁷



David S. Shillman
Associate Director

Cc: 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 MKT LLC
NYSE Arca, Inc.

⁶ See, e.g., FINRA Rule 6191 Supplementary Material 0.5(b).

⁷ 17 CFR 200.30-3(a)(42).