April 4, 2016

Ms. Sherry Sandler
Associate General Counsel
NYSE Arca, Inc.
11 Wall Street, 19th Floor,
New York, NY 10005

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. Sandler:

In its letter dated December 9, 2015,[1] the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of itself and BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca Inc. (the "Exchange" or "NYSE Arca") (collectively, "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] 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 Exchange and the other Participants from the requirements of Rule 608(c) of Regulation NMS that they comply with, and enforce compliance by its members with: (I) Appendix B.II.n, which requires the identification of Retail Investor Orders;[3] (II) certain time reporting requirements of Appendix B.I.a(15) and (22); (III) the time used for performing certain calculations set forth in Appendix B.I.a(31) through B.I.a(33); (IV) the methodology for calculating Market Maker profitability for purposes of Appendix C.I.b and C.I.c; and (V) the requirement under the Tick Size Pilot Plan that Participants provide data collected under the Tick Size Pilot Plan within 30 calendar days following the month-end of the initial data collection date to the Commission.

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[1] See Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority, to Robert W. Errett, Deputy Secretary, Securities and Exchange Commission ("Commission") dated December 9, 2015 ("Exemption Request").

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

[3] Capitalized terms not otherwise defined herein shall have the same meaning as they are defined in the Tick Size Pilot Plan.

The Exchange has submitted a proposed rule change to implement the data collection requirements set forth in the Tick Size Pilot Plan.[4] The NYSE Arca Proposal includes rules that address the items described herein for which you seek exemption from Rule 608(c) of Regulation NMS.

Rule 608(c) of Regulation NMS requires the Participants to comply with the terms of the Tick Size Pilot Plan.[5] Further, Rule 608(c) of Regulation NMS requires each Participant to enforce compliance with the Tick Size Pilot Plan by its members and persons associated with its members.[6] 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.[7]

As discussed below, the Commission pursuant to its authority under Rule 608(e) of Regulation NMS, is hereby granting to the Exchange 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.[8]

Exemption from Certain Provisions of the Tick Size Pilot Plan

I.   Exemption from the Requirement to Enforce Compliance with Certain Retail Investor Order Identification Requirements Under Appendix B.II.n

Appendix B.II to the Tick Size Pilot Plan lists the columns of information to be provided with respect to market orders and non-booked portions of Marketable Limit Orders. Paragraph B.II.n provides that a flag (Y/N) should be used to identify Retail Investor Orders.

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[4]   See Securities Exchange Act Release No. 34-77484 (March 31, 2016), (File No. SR-NYSEArca-2016-52) ("NYSE Arca Proposal").

[5]   17 CFR 242.608(c).

[6]   17 CFR 242.608(c).

[7]   17 CFR 242.608(e).

[8]   The Commission notes that while the Exemption Request seeks exemptive relief for all of the Participants, the Commission is granting exemptive relief herein only to the Exchange. The Commission would consider granting similar limited exemptions to other Tick Size Pilot Plan Participants should they submit proposed rule changes pursuant to Section 19(b) of the Exchange Act that are substantially similar to the NYSE Arca Proposal.

In the Exemption Request, the Participants request an exemption from the requirement in Appendix B.II.n for those orders that may satisfy the definition of Retail Investor Order set forth in the Tick Size Pilot Plan but do not actually utilize the exceptions provided for such orders in Test Groups Two and Three. In the NYSE Arca Proposal, the Exchange proposes Commentary .10 to Rule 7.46(b) to require Trading Centers to report "Y" to their Designated Examining Authority ("DEA") when it is relying upon the Retail Investor Order exception in Test Groups Two and Three, and "N" in all other instances.[9]

The Commission grants the exemption to the Exchange from the requirement in Appendix B.II.n relating to the identification of Retail Investor Orders for those orders that satisfy the definition of Retail Investor Order but do not actually utilize the exceptions set forth in Test Group Two or Test Group Three. Rather, as set forth in Commentary .10 to Rule 7.46(b), Exchange members that operate a Trading Center will be required to identify to their DEA only those Retail Investor Orders that actually rely on the exceptions provided in Test Group Two and Test Group Three of the Tick Size Pilot Plan with a "Y." All other orders will be reported with an "N." The Commission has determined that this exemption should enhance the utility of the Tick Size Pilot Plan data by narrowing the identification of Retail Investor Orders to those that actually utilize the Tick Size Pilot Plan's exceptions. In addition, this exemption could lower the implementation costs for NYSE Arca members by not requiring them to identify and report all Retail Investor Orders. Therefore, the Commission finds that granting 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.

II.   Exemption from Requirement to Report Certain Order Information in Microsecond Increments

Appendix B.I.a to the Tick Size Pilot Plan lists the daily market quality statistics that are to be reported for orders in Pilot Securities. Paragraphs (14), (15), (16), (21), (22), and (23) require that certain information be reported based upon specified time ranges.[10]

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[9]   See supra note 4.

[10]   Specifically, paragraph (14) provides "the cumulative number of shares of orders executed from 0 to less than 100 microseconds after the time of order receipt;" paragraph (15) provides that "the cumulative number of shares of orders executed from 100 microseconds to less than 100 milliseconds after the time of order receipt;" and paragraph (16) provides "the cumulative number of shares of orders executed from 100 milliseconds to less than 1 second after the time of order receipt," should each be reported in separate columns. Further, paragraph (21) provides "the cumulative number of shares of orders canceled from 0 to less than 100 microseconds after time of order receipt;" paragraph (22) provides "the cumulative number of shares of orders canceled from 100 microseconds to less than 100 milliseconds after the time of order receipt;" and paragraph (23)

In the Exemption Request, the Participants indicate that not all Participants and non-Participant Trading Centers currently capture data or report all orders and trades in either microseconds or milliseconds. Accordingly, the Participants, request an exemption from the time reporting requirements of Appendix B.I.a(15) and (22).

In the NYSE Arca Proposal, the Exchange proposes Commentary .30 to Rule 7.46(b) to provide additional reporting fields and modify certain existing reporting fields, so as to permit Participants and non-Participant Trading Centers to submit data pursuant to Appendix B.I.a in seconds or such smaller increments as are available. The NYSE Arca Proposal separates the time requirements in the paragraphs into distinct microsecond and millisecond categories to allow Participants and non-Participant Trading Centers to submit their data under the category that is consistent with their reporting capabilities.[11]

The Commission grants the exemption to the Exchange from the requirements of paragraphs (15) and (22) of Appendix B.I.a, so long as the Exchange complies with, and enforces compliance with its Commentary .30 to Rule 7.46(b). The exemption should reduce implementation costs by accommodating the current reporting capabilities of Participant and non-Participant Trading Centers. The Commission notes that Participants and non-Participant Trading Centers will continue to provide the data required under the Tick Size Pilot Plan but in a manner that is consistent with their individual capabilities. Therefore, 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.

III.   Exemption from the Requirement Under Appendix B.I.a(31) through (33) to Report Certain Information "At the Time of Order Execution"

Appendix B.I.a(31) through (33) provides that certain data be measured and reported "at the time of order execution."[12] According to the Exemption Request, the Participants believe that this information should be captured at the time of order receipt as evaluating share-weighted average prices at the time of order receipt is more consistent

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provides "the cumulative number of shares of orders canceled from 100 milliseconds to less than 1 second after the time of order receipt," should each be reported in separate columns.

[11]   See supra note 4.

[12]   Specifically, paragraph (31) provides "[q]uoted size at the National Best Bid and National Best Offer – the share-weighted average of the consolidated quoted size at the inside price at the time of order execution;" paragraph (32) provides "[s]hare-weighted average NBBO Spread at the time of order execution;" and paragraph (33) provides "[s]hare-weighted average BBO Spread of reporting exchange at the time of order execution," shall be reported.

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with the goal of observing the effect of the Tick Size Pilot Plan on the liquidity of Pilot Securities. Accordingly, the Participants have requested an exemption from the requirement to calculate this data at the time of order execution. In the NYSE Arca Proposal, the Exchange proposes to adopt Commentary .40 to Rule 7.46(b) to require the Exchange and its members to calculate this data at the time of order receipt.[13]

The Commission grants the exemption to the Exchange from the requirements in Appendix B.I.a(31) through (33) to calculate the data at the time of order execution, so long as the Exchange complies with, and enforces compliance with Commentary .40 to its Rule 7.46(b). 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 will provide data that should facilitate thorough analysis of the impact on liquidity of the Tick Size Pilot Plan. The Commission also notes that several data elements under current rules, including Rule 605 of Regulation NMS, are captured based at the time of order receipt. Therefore, utilizing the data calculated at the time of order receipt may reduce implementation costs.

IV.   Exemption Related to the Methodology for Calculating Market Maker Profitability Under Appendix C.I.b and C.I.c

Appendix C.I. to the Tick Size Pilot Plan requires Participants that are DEAs of Market Makers to collect certain data from Market Makers related to Market Maker profitability. Thereafter, the relevant Participants are responsible for aggregating the data and providing that data to the Commission as prescribed under Appendix C.II. to the Tick Size Pilot Plan. In the Exemption Request, the Participants propose to calculate Market Maker profitability under Appendix C.I. differently.

Appendix C.I.b of the Tick Size Pilot Plan defines raw Market Maker realized trading profits as "the difference between the market value of Market Maker sales (shares sold x price) and the market value of Market Maker purchases (shares purchased x price). A LIFO-like method will be used for determining which share prices to use in the calculation." In the Exemption Request, the Participants propose to calculate this statistic for each trading day on a daily LIFO basis using reported trade prices and including only trades executed on the subject trading day. The daily LIFO calculation shall not include any positions carried over from previous trading days.

Appendix C.I.c of the Tick Size Pilot Plan defines raw Market Maker unrealized trading profits as "the difference between the purchase or sale price of the end-of-day inventory position of the Market Maker and the Closing Price. In the case of a short position, the Closing Price from the sale will be subtracted. In the case of a long position, the purchase price will be subtracted from the Closing Price." In the Exemption Request, the Participants propose to calculate daily Market Maker unrealized profitability statistics for each trading day on an average basis. Specifically, the Participants propose to

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[13]   See supra note 4.

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calculate the volume-weighted average price of the excess (deficit) of buy volume over sell volume for the current trading day using reported trade prices. Further, the gain (loss) of the excess (deficit) of buy volume over sell volume shall be determined by using the volume weighted average price compared to the closing price of the security as reported by the Primary Listing Exchange. Participants shall report the number of excess (deficit) shares held by the Market Maker, the volume weighted average price of that excess (deficit) and the closing price of the security as reported by the Primary Listing Exchange.

In the NYSE Arca Proposal, the Exchange proposes to adopt these alternative calculations for Appendix C.I. Specifically, Commentary .80 to Rule 7.46(b) sets forth the alternative calculations for Appendix C.I.b and C.I.c.

The Commission grants the exemption to the Exchange from the requirement of collecting the data set forth in paragraphs C.I.b and C.I.c to Appendix C.I of the Tick Size Pilot Plan so long as the Exchange calculates and provides to the Commission the statistics and data described in its Commentary .80 to its Rule 7.46(b). This calculation should result in a more consistent, uniform, and cost-effective calculation of Market Maker profitability, which should enhance the Commission's ability to assess the impact of the Tick Size Pilot Plan on Market Maker profitability. Therefore, 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.

V.   Exemption Related to the Initial Submission of Tick Size Pilot Data to the Commission

The Tick Size Pilot Plan provides that the data collected by the Participants must be provided to the Commission within 30 calendar days following the month end.[14] In the Exemption Request, the Participants request an exemption from this requirement for the data collected prior to the start of the Tick Size Pilot Plan. The Participants propose to make their initial submission to the Commission on August 30, 2016 and include data from April, May, June and July of 2016. The Participants have requested this exemption so that they can conduct testing to ensure the accuracy of the data prior to the first submission to the Commission and publication on their respective websites.

The Commission grants the exemption to the Exchange from having to submit data set forth in Appendices B and C to the Tick Size Pilot Plan to the Commission within 30 calendar days following the month end during the period before the Pilot Period begins, so long as the Exchange submits the data consistent with dates described herein. Accordingly, the Exchange must submit its initial submission of Tick Size Pilot Plan data on August 30, 2016 and include data from April, May, June and July of 2016. Submission in this manner should provide the Exchange with sufficient time to test their systems and ensure the accuracy of the data. Therefore, the Commission has determined

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[14]   See Appendix B and Appendix C.

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.

<p style="text-align:center">*   *   *</p>

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 Exchange must immediately resume operating in accordance with all of the provisions in the Tick Size Pilot Plan.

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority.[15]

John C. Roeser
Associate Director

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[15] 17 CFR 200.30-3(a)(42).