



August 31, 2018

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”), Investors Exchange LLC, on behalf of itself and Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ BX, Inc., NASDAQ PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc. (collectively, “Participants”), requests that the Securities and Exchange Commission (“Commission” or “SEC”) grant an exemption from the quoting and trading requirements of the National Market System Plan (“Plan”) to Implement a Tick Size Pilot Program (“Pilot”), such that the quoting and trading requirements of the Plan would effectively end on Friday, September 28, 2018, rather than on Tuesday, October 2, 2018. Capitalized terms not otherwise defined in this letter shall have the meanings ascribed to them in the Plan.

### Background

On August 25, 2014, the Participants filed the Plan<sup>1</sup> with the Commission, pursuant to Section 11A of the Exchange Act<sup>2</sup> and Rule 608 of Regulation NMS thereunder.<sup>3</sup> The Participants filed the Plan to comply with an order issued by the Commission on June 24, 2014.<sup>4</sup> 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.<sup>5</sup> The Commission approved the Pilot on a two-year

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<sup>1</sup> See Letter from Brendon J. Weiss, Vice President, Intercontinental Exchange, Inc., Secretary, Commission, dated August 25, 2014.

<sup>2</sup> 15 U.S.C. 78k-1.

<sup>3</sup> 17 CFR 242.608.

<sup>4</sup> See Securities Exchange Act Release No. 72460 (June 24, 2014), 79 FR 36840 (June 30, 2014).

<sup>5</sup> See Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015).

basis, with implementation to begin no later than May 6, 2016.<sup>6</sup> On November 6, 2015, the SEC granted an exemption allowing the Participants to defer implementing the Pilot until October 3, 2016.<sup>7</sup> Under the Plan, the Pilot is scheduled to run for two years from that date. Therefore, the Pilot Period is due to expire at the end of trading on Tuesday, October 2, 2018.

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 all provisions of the Plan, including the Plan's quoting and trading requirements.<sup>8</sup>

#### 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.”<sup>9</sup> 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.”<sup>10</sup> The Participants are seeking exemptive relief from the Test Group quoting and trading requirements as set forth in Section VI B., C., and D. of the Plan, as described below.

Section VI of the Plan generally establishes the quoting and trading requirements for the Control Group and each Test Group. When those requirements end, the Participants intend to transfer to the Control Group all of the securities that are included in each of the Test Groups, consistent with the practice that they have followed during the Pilot Period when individual securities no longer qualify for inclusion in one of the Test Groups and are moved to the Control Group.<sup>11</sup> Transferring securities from the Test Groups to the Control Group will allow the Participants to continue the post-Pilot data collection requirements as set forth in the Plan.

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<sup>6</sup> Id.

<sup>7</sup> See Securities Exchange Act Release No. 76382 (November 6, 2015), 80 FR 70284 (November 13, 2015).

<sup>8</sup> See Section VI of the Plan.

<sup>9</sup> 17 CFR 242.608(c).

<sup>10</sup> 17 CFR 242.608(e).

<sup>11</sup> See, e.g., Letter from David S. Shillman, Associate Director, Division of Trading and Markets, SEC, to Claudia Crowley, Chief Regulatory Officer, IEX Group, Inc., dated October 3, 2016.

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Members of the Participants have made changes to their internal systems to comply with the quoting and trading requirements for each of the Test Groups. Industry representatives have represented to the Participants that changing the quoting and trading requirements during the trading week may increase the risk of a disorderly transition out of the Pilot, by requiring members to make necessary system changes on a very short time frame. Ending the restrictions at the end of a trading week, in contrast, will provide sufficient time to adjust and test internal systems and minimize the risk of potential disruption.

Absent an exemption or other relief, the Participants will be required to comply, and enforce compliance by their members, with the quoting and trading requirements under Section VI B., C., and D. of the Plan through October 2, 2018. To minimize any potential systems issues, the Participants request that the Commission grant to Participants an exemption from the quoting and trading requirements of Section VI B., C., and D. of the Plan, to allow all Pilot Securities to be quoted and traded as Control Group securities, effective as of the end of trading on Friday, September 28, 2018.

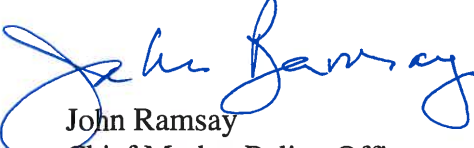
The requested exemption will have no impact on the collection or publication of data under Appendix B and Appendix C of the Plan, which under Section VII of the Plan is required to continue for six months following the end of the Pilot Period. Subject to the receipt of the requested exemption, the Participants intend to submit to the Commission, for immediate effectiveness under Section 19(b)(3)(A) of the Exchange Act, rule filings to make any corresponding changes to their respective rules needed to ensure their rules remain consistent with the Plan, as modified by the exemption.

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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 from the specified requirements of Section VI of the Plan, as set forth above. For the reasons described above, the Participants 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 for your consideration of this request.

Sincerely,

  
John Ramsay  
Chief Market Policy Officer  
IEX