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December 18, 2015

Via Electronic Mail (rule-comments@sec.gov)

Robert W. Errett, Deputy Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549

Re: File No. SR-NYSE-2015-46; SR-FINRA-2015-047; SR-BATS-2015-108; Self-Regulatory Organizations; Proposed Rule Changes To Implement the Quoting and Trading Requirements of the Regulation NMS Plan To Implement a Tick Size Pilot Program

Dear Mr. Errett:

The Securities Industry and Financial Markets Association ("SIFMA")[1] submits this letter to comment on the above referenced proposed rule changes filed with the Securities and Exchange Commission ("Commission") by the New York Stock Exchange ("NYSE"), Financial Industry Regulatory Authority ("FINRA"), and BATS Exchange Inc. ("BATS") (collectively, "SROs"). As required by the Plan to Implement a Tick Size Pilot Program Submitted to the Securities and Exchange Commission pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934 ("Tick Size Plan" or "Plan"),[2] the proposed rule changes set forth the requirements for member firms in meeting their quoting and trading obligations under the Tick Size Plan. At this point, we are writing to note concern with differences among the proposed rule changes on technical, but critical points. These differences apply both to key defined terms under the Tick Size Plan and to the operation of the Plan's "trade-at" component. We have suggestions on how some of these differences should be resolved but, in any event, all of the participants of the Tick Size Plan must have consistent rules in place well before the start date of the pilot.

As the Commission is aware, the Tick Size Plan provides for three test groups of pilot securities. Pilot securities in Test Group Three are subject to a "trade-at" prohibition. The Tick Size Plan provides that, "[u]nder the trade-at prohibition, the Plan will (1) prevent a trading

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1 The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to support a strong financial industry, investor opportunity, capital formation, job creation and economic growth, while building trust and confidence in the financial markets. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

2 *See* Securities Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27514 (May 13, 2015), available at http://www.gpo.gov/fdsys/pkg/FR-2015-05-13/pdf/2015-11425.pdf; *see also* http://www.sec.gov/rules/sro/nms/2015/34-74892-exa.pdf.

center that was not quoting from price-matching protected quotations and (2) permit a trading center that was quoting at a protected quotation to execute orders at that level, but only up to the amount of its displayed size."[3] In addition, Section II(B) of the Tick Size Plan provides that "…each Participant will adopt rules requiring compliance by its members with the provisions of the Plan, as applicable, and adopt such other rules as are needed for such compliance."[4] Accordingly, the NYSE, FINRA, and BATS have each filed with the SEC rules designed to ensure member compliance with the quoting and trading increments of the Tick Size Plan, including the trade-at requirement.[5]

The NYSE proposal includes material differences from the FINRA and BATS proposals on the operation of the trade-at requirement.[6] More specifically, the NYSE proposal would limit a trading center from price matching a protected quotation to when the trading center is displaying in a principal capacity.[7] In contrast, FINRA and BATS have proposed language that is consistent with the actual terms of the Tick Size Plan, which would not restrict price matching to a trading center's principal quoting activity.[8] The NYSE did not state a particular reason for diverging from the terms of the Tick Size Plan, leading to the conclusion that it is motivated by its commercial interests in limiting the amount of trading permitted off-exchange in Test Group Three securities. We believe the Commission should approve the FINRA and BATS proposals.

In any event, if these different proposals are both approved by the Commission, member compliance with the differing rules would be virtually impossible. This situation would be untenable, particularly in light of the overall operational complexity of the Tick Size Plan. Moreover, market participants have repeatedly requested that the SROs' rule changes for the Tick Size Plan be approved and effective well in advance of the applicable deadlines in order to

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3 *Id.* at 27549.

4 *Id*. at 27548.

5 *See* Securities Exchange Act Release No. 76229 (October 22, 2015), 80 FR 66065 (October 28, 2015)("**NYSE Tick Size Proposal**"); *see also* Securities Exchange Act Release No. 76483 (November 19, 2015), 80 FR 73853 (November 25, 2015) ("**FINRA Tick Size Proposal**"); *see also* Securities Exchange Act Release No. 76552 (December 3, 2015), 80 FR 76591 (December 9, 2015)("**BATS Tick Size Proposal**").

6 BATS provides that its proposed change is substantially similar to that proposed by FINRA and accordingly for the purposes of this comment letter, the BATS and FINRA proposals will be treated as identical. *See* BATS Tick Size Proposal at 76591 n. 3.

7 *See* NYSE Tick Size Proposal at 66067.

8 S*ee* FINRA Tick Size Proposal at 73855.

provide sufficient time to implement the necessary systems and coding changes.[9] The lack of consistency on the trade-at requirements creates confusion and could result in additional delays in the implementation of the Tick Size Pilot. Member firms will not be willing to begin the necessary systems changes due to the conflicting requirements being proposed by the SROs.

The NYSE proposal also includes key defined terms that differ from those proposed by FINRA and BATS. For example, while the FINRA and BATS definition of "Retail Investor Order" mirrors that of the Tick Size Plan, the NYSE differs by restricting its usage to agency and riskless principal orders that are submitted and operate pursuant to the NYSE's Retail Liquidity Program. These defined terms should be harmonized and made consistent across the rules of the Plan Participants before the Pilot takes effect.

It is imperative that market participants be provided with the necessary clarity in the rules implementing the Tick Size Pilot. The current lack of coordination will have a direct impact on the amount of time market participants will have to implement the proposed rule changes. As it stands now, the competing SRO proposals will take time to work their way through the Commission's review and approval (or disapproval) process, so we may find ourselves once again in a situation in which the rules to implement the Tick Size Plan are not in place to allow member firms to make the necessary systems changes to implement the requirements of the Plan and the rules. In our view, the Commission should direct the Plan Participants to work together now to amend their proposals to make them harmonized and consistent. Any other alternative is at minimum inefficient (i.e. disapproving certain rule filings will subsequently require re-filing by the SROs), or at worst, impossible for member compliance (i.e. approval of all rule proposals).

[9] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, to Stephen Luparello, Director, Division of Trading and Markets, Commission, dated August 31, 2015 (requesting the data collection period be extended until at least three months after the requisite SRO rules are approved by the Commission and related interpretive guidance is published).

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SIFMA would be pleased to discuss these comments in greater detail. If you have any questions, please contact either me (at 202-962-7383 or tlazo@sifma.org) or Timothy Cummings (at 212-313-1239 or tcummings@sifma.org).

Sincerely,

Theodore R. Lazo
Managing Director and
Associate General Counsel

cc: Mary Jo White, Chair
Luis A. Aguilar, Commissioner
Michael S. Piwowar, Commissioner
Kara M. Stein, Commissioner

Stephen Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
David S. Shillman, Associate Director, Division of Trading and Markets