UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

October 6, 2015

Albert J. Kim
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Re: Request for Exemptive Relief under Rule 201 of Regulation SHO Regarding Certain Procedures with respect to the Chicago Stock Exchange's Proposed On-Demand Auction Functionality

Dear Mr. Kim:

In your letter dated October 6, 2015, as supplemented by conversations with the staff ("Staff") of the Division of Trading and Markets ("Division") of the Securities and Exchange Commission ("Commission"), you request that the Commission grant exemptive relief under Rule 201 of Regulation SHO ("Rule 201")[1] under the Securities Exchange Act of 1934 (the "Exchange Act") from certain requirements of the short sale price test restriction of Rule 201, if the Chicago Stock Exchange, Inc. ("CHX" or "Exchange"), as a trading center under Rule 201,[2] implements its fully-undisplayed, on-demand auction, SNAP℠ (Sub-second Non-displayed Auction Process). Specifically, you request that the Commission grant relief from the "current" national best bid requirement explicitly required by Rule 201 to determine whether a short sale order in a covered security subject to Rule 201 can be executed in a SNAP Cycle as described herein. You represent that the Exchange will comply with all other requirements of Rule 201 when executing short sale orders in a covered security in a SNAP Cycle.

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1 17 CFR 242.201.

2 A "trading center" is "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." *See* 17 CFR 242.201(a)(9); 17 CFR 242.600(b)(78).

A copy of your letter is attached to this response. By including a copy of your letter, we avoid having to repeat or summarize the facts you presented. The defined terms in this letter have the same meanings as in your letter, unless otherwise noted.

A. Background

Rule 201 requires, among other things, that a trading center establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. Rule 201 also requires that the trading center establish, maintain, and enforce written policies and procedures reasonably designed to impose the short sale price test restriction for the remainder of the day and the following day when a national best bid for the covered security is calculated and disseminated on a current and continuing basis by a plan processor pursuant to an effective national market system plan. The Commission adopted Rule 201 to prevent short selling, including potentially manipulative or abusive short selling, from driving down further the price of a security that has already experienced a significant intra-day price decline; to facilitate the ability of long sellers to sell first upon such a decline; and to help address erosions of investor confidence in our markets generally.

Unless a sale order is marked "short exempt,"[3] the Exchange's Rule 201 policies and procedures must be reasonably designed to prevent the execution or display[4] of a short sale order at a price that is less than or equal to the current national best bid. You state that the SNAP Cycle may, in certain rare instances and for a very limited period of time during the SNAP Cycle, create a tension between Rules 610(d)[5] and 611[6] of Regulation NMS and Rule 201 and that, as a result, the Exchange does not believe that SNAP Cycles can be reasonably designed to comply with Rule 201.

Specifically, in your letter, you state that during stage 3 of the SNAP Cycle, the Pricing and Satisfaction Period, the Exchange will, in some circumstances, send SNAP Eligible Orders to away markets in furtherance of Regulation NMS Rules 610(d) and 611. When this occurs, this will cause a delay to allow for confirmations of routed orders to be received from away markets of up to 200 milliseconds between the stage 2 market snapshot and SNAP executions ("SNAP execution delay"), which may result in SNAP Eligible Orders executing at or below the current national best bid while Rule 201 is in effect. You indicate that the purpose of the SNAP

3 Rule 200(g)(2) provides that a sale order shall be marked "short exempt" only if the provisions of paragraph (c) or (d) of Rule 201 are met. 17 CFR 242.200(g)(2).

4 Since SNAP Cycles are fully undisplayed, permissible display prices for purposes of Rule 201 and the initial display exception in Rule 201(b)(1)(iii)(A) of Regulation SHO would not be applicable.

5 17 CFR 242.610(d).

6 17 CFR 242.611.

execution delay is to minimize the chance that routed orders cancelled by the away market would not be able to participate in the SNAP execution at the Exchange. You note that by delaying order matching for a period of time not to exceed 200 milliseconds, the Exchange maximizes the chance that unexecuted routed orders would return to the Exchange in time to participate in the stage 4 Order Matching Period. Further, you note that if the SNAP Price does not require orders to be routed away, the SNAP Cycle would immediately proceed to execution, the stage 4 Order Matching Period.[7]

In those cases where SNAP Eligible Orders that are required to be routed to one or more away markets during the stage 3 Pricing and Satisfaction Period and Rule 201 is in effect and the national best bid increases to a price at or above the SNAP Price during the SNAP execution delay or Rule 201 goes into effect during the SNAP execution delay, there is a potential that the SNAP Eligible Orders marked Sell Short may return to the Exchange and be executed at a price that is at or below the then current national best bid. You state that you believe that this will be a rare situation, requiring the convergence of multiple factors occurring during this up to 200 millisecond SNAP execution delay.

Absent relief, such SNAP executions would require the Exchange to go through the stage 2 market snapshot process again, which could lead to an endless cycle of repricing if the national best bid continues to fluctuate. You state that this would compromise the effectiveness of SNAP Cycles as a viable trading functionality. You further state that omitting such orders from the auction as an alternative would expose the most aggressively priced SNAP Eligible Orders on the SNAP CHX book to the risk of not receiving an execution if they were routed away pursuant to either SNAP routing event #1 or SNAP routing event #2 and cancelled by the away market. This would result in a loss of liquidity for these market participants seeking to trade in bulk orders on the Exchange.

You represent that SNAP Cycles would not encourage manipulative practices with regard to short sales. Specifically, you represent that since the stage 2 market snapshot would only be taken after the Exchange has stopped accepting SNAP Eligible Orders for inclusion in the instant SNAP Cycle, market participants would not be able to include a rush of limit orders marked Sell Short to participate in the instant SNAP Cycle, so as to take advantage of a favorable national best bid ascertained from the stage 2 market snapshot. Also, you represent that since SNAP Eligible Orders cannot be cancelled by an order sender during the SNAP execution delay, nor during any other time during the SNAP Cycle, market participants would not be able to cancel limit orders marked Sell Short in response to an unfavorable change in the national best bid during the SNAP execution delay.

7 You represent that, with the exception of the randomized stage 2 SNAP Order Acceptance Period and the stage 3 Pricing and Satisfaction Period, all other processes during a SNAP Cycle are virtually instantaneous, including the calculation of the SNAP Price. Thus, absent the stage 3 Pricing and Satisfaction Period, SNAP executions at the SNAP Price would occur immediately after the stage 2 market snapshot.

B. Discussion

We believe that granting relief to allow the Exchange to execute short sales in SNAP Cycles when Rule 201 is in effect is appropriate to address the tension between the Regulation NMS provisions and Rule 201. In adopting Rule 201, the Commission stated that Rule 201 is narrowly-tailored to target only those securities that are experiencing significant intra-day price declines. The Commission sought to strike an appropriate balance between our goal of preventing short selling, including potentially manipulative or abusive short selling, from being used as a tool to exacerbate a declining market in a security and the need to allow for the continued smooth functioning of the markets, including the provision of liquidity and price efficiency in the markets in adopting Rule 201. Also in adopting Rule 201, the Commission sought to limit impediments to the normal operations of the market.

This relief is only being provided to the Exchange if SNAP Eligible Orders are routed away during the stage 3 Pricing and Satisfaction Period. As noted above, we recognize that the Exchange may encounter certain tensions related to the application of Rule 201 and the Regulation NMS provisions. The relief does not affect the application of Rule 201 to SNAP Cycles or the Exchange's responsibility as a trading center to ensure its compliance with the requirements of Rule 201. In all other respects, the Exchange must have policies and procedures reasonably designed to prevent the execution or display of a short sale order in a covered security at a price at or below the current national best bid when Rule 201 is in effect.

Accordingly, we find that it is appropriate in the public interest and consistent with the protection of investors to grant an exemption from Rule 201, on the basis of your representations, but without necessarily concurring in your analysis, to permit the Exchange to use a reference price other than the current national best bid under Rule 201 in determining permissible execution prices in SNAP Cycles where there is a SNAP execution delay between the stage 2 market snapshot and SNAP executions, subject to the following conditions:

1) The Exchange will have systems in place to reasonably ensure that:

    a) the SNAP execution delay is effected pursuant to the relevant CHX rules, as stated in your letter and the associated Rule 19b-4 proposed rule change;

    b) all SNAP Eligible Orders marked Sell Short that are priced at or below the national best bid ascertained from the stage 2 market snapshot when Rule 201 is in effect are repriced to a permissible price, in preparation for SNAP executions during the stage 4 Order Matching Period;

2) The Exchange will regularly monitor the repricing of orders as described under paragraph 1(b), document any issues and immediately escalate such issues for remediation to senior Exchange compliance staff;

3) The Exchange will surveil:

a) to identify any unnecessary or unreasonable delay in order execution in the SNAP Cycle and notify Staff if the time period between the stage 2 market snapshot and execution (stage 4 Order Matching Period) increases for any reason or if there is an execution delay during any SNAP Cycle due to reasons other than as permitted by CHX Rules, as stated in your letter and the associated Rule 19b-4 proposed rule change;

b) for compliance with the marking requirements of Rule 200 of Regulation SHO in a manner consistent with the Exchange's current practice;

c) to identify potential impact of this relief on price movements of the subject securities;[8]

4) The Exchange will promptly notify the Staff of any Rule 201 related issues regarding the SNAP Cycle and the remediation thereof;

5) The Exchange will make, keep and furnish promptly upon request the books and records as required by the federal securities laws;

6) The Exchange will comply with all of the requirements of Rule 201 (other than the relief granted herein); and

7) In connection with the implementation of the SNAP functionality, the Exchange will remind its members of their marking obligations under Rule 200 of Regulation SHO, in particular its members' marking obligations under Rule 200(g)(2) and their obligations to ensure the appropriate use of provisions (c) and (d) of Rule 201 when marking orders short exempt.

The foregoing exemption from Rule 201 is based solely on the representations in your October 6, 2015 letter and the representations and facts you have presented to the Staff. In the event that any material change occurs in the facts or representations in your letter, reliance on the relief shall be discontinued, pending presentation of the facts for our consideration. The exemption granted herein is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act.

In addition, your attention is directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other applicable provisions of the federal or state securities laws must rest with participants to the transactions. The Commission expresses no

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[8] The Exchange represents that it will compare SNAP Eligible Orders marked Sell Short that were executed during a Rule 201 short sale price test against the national best bid at the time of: (i) the stage 2 market snapshot; and (ii) SNAP executions during the stage 4 Order Matching Period.

view with respect to other questions that the proposed transactions may raise, including, but not limited to, the applicability of other federal and state laws to the proposed transactions.

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

Josephine J. Tao
Assistant Director

Attachment

cc: Andrea Orr
Special Counsel

CHX CHICAGO STOCK EXCHANGE

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October 6, 2015

By Electronic Mail

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Re: Request for Exemptive Relief under Rule 201 of Regulation SHO Regarding Certain Procedures with respect to the Chicago Stock Exchange's Proposed On-Demand Auction Functionality

Dear Ms. Tao:

The Chicago Stock Exchange, Inc. ("CHX" or "Exchange") respectfully requests that the Commission grant an exemption under Rule 201(f) of Regulation SHO from certain requirements of the short sale price test restriction of Rule 201 of Regulation SHO ("Rule 201")[1] under the Securities Exchange Act of 1934 (the "Act"), if the CHX implements its fully-undisplayed, on-demand auction, SNAP℠ (Sub-second Non-displayed Auction Process), in accordance with the facts and representations described herein.

A. Description of the Proposed SNAP Cycle

On June 23, 2015, the Exchange filed a proposed rule change, pursuant to Rule 19b-4 under the Act, to adopt SNAP, an intra-day, sub-second and on-demand auction service that deemphasizes speed as a hallmark of its functionality.[2] On August 24, 2015, the Exchange filed a partial amendment no. 1 to the rule filing amending certain proposed minimum order size requirements.[3] As proposed, SNAP Cycles[4] would never be scheduled by the Exchange and

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1 17 CFR 242.201.

2 See Exchange Act Release No. 75346 (July 1, 2015), 80 FR 39172 (July 8, 2015) (SR-CHX-2015-03) (Notice of Proposed Rule Change to Implement CHX SNAP℠).

3 See infra note 7.

4 See id, proposed CHX Article 18, Rule 1.

would always be driven by market demand for bulk trading in a subject security. The key features of a SNAP Cycle are as follows:[5]

- The entire SNAP Cycle is designed to be completed in less than one second;
- Automated trading in the subject security on the Exchange would be suspended during a SNAP Cycle; provided, however, automated trading in the subject security may continue to occur simultaneously elsewhere in the national market system;
- Only limit orders marked Start SNAP[6] that meet minimum size,[7] price (i.e., priced at the market or more aggressively) and time of receipt[8] requirements could initiate a SNAP Cycle ("valid Start SNAP orders");[9]
- Only the following orders would be permitted to participate in SNAP Cycles ("SNAP Eligible Orders"[10]) that have already been initiated:

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5 A comprehensive description of SNAP Cycles may be found in the related proposed rule change. See supra note 2.

6 See supra note 2, proposed CHX Article 1, Rule 2(h)(1).

7 The Start SNAP order must be for (1) at least 2,500 shares and have a minimum aggregate notional value of $250,000 or (2) at least 20,000 shares with no minimum aggregate notional value requirement. The Exchange proposes to maintain the proposed exception for Start SNAP orders in Berkshire Hathaway, Inc. ("BRK-A"), which will remain 100 shares.

8 A limit order marked Start SNAP would only initiate a SNAP Cycle if it is received during the regular trading session; provided, however, that it would not initiate a SNAP Cycle if it is received (a) within five minutes of the first two-sided quote in the subject security having been received by the Exchange from the primary market disseminated after either the beginning of the regular trading session or a trading halt or pause that required the Exchange to suspend trading in the subject security; (b) within five minutes of the end of the regular trading session; (c) during a SNAP Cycle or (d) within one minute after the completion of the previous SNAP Cycle.

9 Start SNAP orders marked Sell Short may not initiate a SNAP Cycle during a short sale price test restriction of Rule 201 in the subject security. Start SNAP orders marked Short Exempt may initiate a SNAP Cycle during a short sale price test restriction of Rule 201 in the subject security.

10 See supra note 2, proposed CHX Article 1, Rule 1(ss).

- Limit orders not marked Cancel On SNAP,[11] Immediate Or Cancel ("IOC")[12] or Fill Or Kill;[13] and

- Start SNAP orders that meet the requirements for special handling to join, rather than initiate, a SNAP Cycle in progress;

- SNAP Cycles are designed to seamlessly transition from automated trading to the SNAP Cycle and from the SNAP Cycle back to automated trading;

- SNAP Cycles could occur numerous times in a subject security during the regular trading session only;[14] and

- Order cancellations would be prohibited during a SNAP Cycle.

A SNAP Cycle is comprised of the following five stages:

- Stage 1 - Initiating the SNAP Cycle;

- Stage 2 - SNAP Order Acceptance Period;

- Stage 3 - Pricing and Satisfaction Period;

- Stage 4 - Order Matching Period; and

- Stage 5 - Transition to the Open Trading State.[15]

Only valid Start SNAP orders could initiate a SNAP Cycle.[16] Upon initiation of a SNAP Cycle, automated trading in the subject security would be suspended on the Exchange and the Exchange

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11 See supra note 2, proposed CHX Article 1, Rule 2(h)(2).

12 See CHX Article 1, Rule 2(d)(4).

13 See CHX Article 1, Rule 2(d)(2).

14 CHX Article 20, Rule 1(b) provides that the "regular trading session – shall begin at 8:30 a.m. and shall end at 3:00 p.m. each day for all securities." All times are in central time, unless noted otherwise.

15 As proposed, "Open Trading State" is the period of time during the regular trading session when orders are eligible for automatic execution. See supra note 2, proposed CHX Article 1, Rule 1(qq).

16 A Start SNAP order that does not meet one or all of the requirements to initiate a SNAP Cycle is invalid and will be cancelled, unless it meets the requirements for special

would notify the market that a SNAP Cycle in the subject security has begun. The Exchange would not disseminate any other information concerning the SNAP Cycle, including without limitation, size, price or side of the valid Start SNAP order.

During the stage 2 SNAP Order Acceptance Period, incoming SNAP Eligible Orders would be accepted for a randomized period pre-established by the Exchange (at or between 475 to 525 milliseconds) for ranking on the SNAP CHX book.[17] Incoming SNAP Eligible Orders received after the SNAP Order Acceptance Period has expired would not be eligible to participate in the current SNAP Cycle. In addition, order cancellations would be prohibited during a SNAP Cycle. At the conclusion of the stage 2 SNAP Order Acceptance Period, the Exchange would take a market snapshot of the protected quotations of away markets in the subject security ("stage 2 market snapshot") and determine whether or not the CHX routing services are available. If the stage 2 market snapshot shows that both a two-sided national best bid and offer ("NBBO") exists and the CHX routing services are available, the SNAP Cycle would immediately continue to the stage 3 Pricing and Satisfaction Period and the stage 2 market snapshot would serve as the basis for the stage 3 Pricing and Satisfaction Period. If, however, the stage 2 market snapshot shows that a two-sided NBBO does not exist or the CHX routing services are unavailable, the Exchange would abort the SNAP Cycle, take another market snapshot, skip stages 3 and 4 and immediately continue to the stage 5 Transition to the Open Trading State.[18]

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handling as a SNAP AOO – One And Done, in which case the Start SNAP order will join a SNAP Cycle in progress as a SNAP AOO – One And Done. See supra note 2, proposed CHX Article 1, Rule 2(h)(C).

17 If the Exchange does not receive any new incoming orders during the stage 2 SNAP Order Acceptance Period or does not transition any orders to the SNAP CHX book, the SNAP Cycle will be aborted and will immediately proceed to the stage 5 Transition to the Open Trading State.

18 When calculating the SNAP Price, the Exchange will include all protected quotations of away markets in the subject security to determine the maximum number of shares that may be executed. See supra note 2, proposed CHX Article 1, Rule 1(rr). In light of this, as well as the aggressive pricing requirement to initiate a SNAP Cycle, the Exchange believes that executions at the SNAP Price will frequently require orders to be routed away for, among other reasons, Regulation NMS compliance purposes. See supra note 2, proposed CHX Article 1, Rule 2(h)(1)(A)(ii). Thus, the availability of the CHX routing services is essential to the SNAP Cycle. Moreover, based on the operational history of the CHX routing services, the Exchange believes that the likelihood of the CHX routing services becoming unavailable during a SNAP Cycle to be small. The Exchange also notes that a SNAP Cycle will not be initiated if the CHX routing services is unavailable at the time the Exchange receives a Start SNAP order. See supra note 2, proposed CHX Article 1, Rule (h)(1)(A)(iv).

During the stage 3 Pricing and Satisfaction Period, the Exchange would determine the SNAP Price[19] and may route away SNAP Eligible Orders, under two circumstances, as discussed below. Prior to determining the SNAP Price, if the short sale price test restriction of Rule 201 is in effect for the subject security, SNAP Eligible Orders marked Sell Short[20] with limit prices at or below the current national best bid ("NBB") ascertained from the stage 2 market snapshot would be repriced by the Exchange to one minimum price increment above the current NBB.[21]

If a SNAP Price is determined to be at a price that would require orders to be routed away, the Exchange would route away SNAP Eligible Orders resting on the SNAP CHX book, as intermarket sweep orders marked Immediate Or Cancel ("ISO/IOC"), in the order of their execution priority on the SNAP CHX book, under the following two circumstances:[22]

- If the SNAP Price is priced <u>inferior</u> to the protected quotations of away markets ascertained from the stage 2 market snapshot (<u>e.g.</u>, a participating sell order is to execute at a SNAP Price that is below a protected bid), the Exchange would route away SNAP Eligible Orders resting on the SNAP CHX book, as necessary, to the relevant away markets, for Rule 611 compliance purposes ("SNAP routing event #1").

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19 <u>See</u> <u>supra</u> note 2, proposed CHX Article 1, Rule 1(rr).

20 <u>See</u> CHX Article 1, Rule 2(b)(3)(D).

21 A SNAP Eligible Order marked Short Exempt would not be repriced if it has a limit price at or below the current NBB, as a trading center is required to maintain policies and procedures reasonably designed to permit the execution or display of a short sale order of a covered security marked "short exempt" without regard to whether the order is at a price that is less than or equal to the current NBB, pursuant to Rule 201(b)(1)(iii)(B) of Regulation SHO. Also, the exception in Rule 201(b)(1)(iii)(A) of Regulation SHO would not apply to a SNAP Eligible Order marked Sell Short that is being transitioned to the SNAP CHX book, as they are non-displayed orders on the SNAP CHX book, and such an order shall be repriced to a permissible price, if necessary, as described above.

22 Mechanically, upon the triggering of a Routing Event, as defined under CHX Article 19, Rule 3(a), the Exchange's routing systems would create the necessary IOC/ISOs each of which would correspond to resting SNAP Eligible Orders on the SNAP CHX book, place the corresponding SNAP Eligible Orders in a pending routing state and route away the IOC/ISOs to the away market. If an IOC/ISO is returned to the Exchange unexecuted during the Satisfaction Period, the corresponding SNAP Eligible Order would be released as unexecuted and placed back in the SNAP CHX book at its original rank. If, however, the IOC/ISO is not returned during the Satisfaction Period, the corresponding SNAP Eligible Order would not participate in the instant SNAP Cycle. IOC/ISOs corresponding to SNAP Eligible Orders marked Sell Short or Short Exempt would retain their markings when routed away.

- If the SNAP Price is priced at the protected quotations of away markets ascertained from the stage 2 market snapshot and if there is a surplus of contra-side orders on the SNAP CHX book executable at the SNAP Price, the Exchange would route away SNAP Eligible Orders to the extent of the size of the surplus or the displayed size of all protected quotations of away markets, whichever is smaller ("SNAP routing event #2").

Immediately after the necessary orders are routed away pursuant to either SNAP routing event #1 or SNAP routing event #2, the SNAP Cycle would enter the Satisfaction Period, during which time the Exchange would delay proceeding to the stage 4 Order Matching Period for a period of time not to exceed 200 milliseconds to allow for confirmations of routed orders to be received from away markets ("SNAP execution delay"). The purpose of the SNAP execution delay is to minimize the chance that routed orders cancelled by the away market would not be able to participate in the SNAP execution at the Exchange. That is, by delaying order matching for a period of time not to exceed 200 milliseconds, the Exchange maximizes the chance that unexecuted routed orders would return to the Exchange in time to participate in the stage 4 Order Matching Period. However, if the SNAP Price does not require orders to be routed away, the SNAP Cycle would immediately proceed to the stage 4 Order Matching Period.[23]

During the stage 4 Order Matching Period, orders remaining on the SNAP CHX book would be matched and executed at the SNAP Price, without taking a new market snapshot ("SNAP executions"). Upon conclusion of the matching of orders at the SNAP Price, the Exchange would take another snapshot of the protected quotations of away markets in the subject security for purposes of the stage 5 Transition to the Open Trading State. Upon conclusion of the stage 5 Transition to the Open Trading State, the Exchange would resume automated trading in the subject security.

B. Discussion

The Exchange believes that SNAP Cycles and the SNAP execution delay, in particular, are reasonably designed to comply with Rule 611 of Regulation NMS ("Rule 611"),[24] Rule 610(d) of Regulation NMS ("Rule 610(d)")[25] and the Trade-At Prohibition of the upcoming Tick Size Pilot

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23 With the exception of the randomized stage 2 SNAP Order Acceptance Period and the Satisfaction Period during the stage 3 Pricing and Satisfaction Period, all other processes during a SNAP Cycle are virtually instantaneous, including the calculation of the SNAP Price. Thus, absent a Satisfaction Period, SNAP executions at the SNAP Price would occur immediately after the stage 2 market snapshot.

24 17 CFR 242.611.

25 17 CFR 242.610(d).

Program, filed pursuant to Rule 608 of Regulation NMS.[26] However, as a result, the Exchange believes that SNAP Cycles cannot be reasonably designed to comply with Rule 201, as discussed below. In light of this tension, the Exchange is requesting exemptive relief from certain requirements of Rule 201.

Rule 611, among other things, requires trading centers,[27] such as CHX, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent "trade-throughs" – the execution of trades at prices inferior to protected quotations. Rule 611(b)(6) contains an exception for ISOs, which permits a transaction that constituted a trade-through to be effected by a trading center that simultaneously routed ISOs to execute against the full displayed size of any protected quotation in the NMS stock that was traded-through.[28] Commission staff has provided guidance regarding what constitutes reasonably designed policies and procedures for Rule 611 compliance purposes.[29] Also, Rule 610(d), among other things, requires each national securities

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26 See Exchange Act Release No. 74892 (May 6, 2015), 80 FR 27513 (May 13, 2015) (Order Approving the National Market System Plan to Implement a Tick Size Pilot Program by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, 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., as Modified by the Commission, for a Two-Year Period).

27 Rule 201(a)(9) states the term "trading center" will have the same meaning as in Rule 600(b)(78). 17 CFR 242.201(a)(9). Rule 600(b)(78) of Regulation NMS defines a "trading center" as "a national securities exchange or national securities association that operates an SRO trading facility, an alternative trading system, an exchange market maker, an OTC market maker, or any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent." 17 CFR 242.600(b)(78).

28 17 CFR 242.611(b)(6).

29 Commission staff recognized that a broker-dealer could face practical issues in executing a block trade for its customer if the customer wished to receive the benefit of any better prices obtained through the routing of related IOC/ISOs, pursuant to Rule 611(b)(6), because the ultimate size of the block trade would not be known until all responses were received to the IOC/ISOs. In such a case, Commission staff noted that the reporting of the block trade could be delayed while awaiting responses to the IOC/ISOs for a reasonable time (e.g., five seconds or less) and that the routing of such IOC/ISOs would be considered to have been simultaneously routed relative to the delayed execution of the block trade, in compliance with Rule 611(b)(6). Thus, Commission staff noted that the broker-dealer would not be required by Rule 611 to route any additional IOC/ISOs when the block trade is ultimately reported. See "Division of Trading and Markets: Responses to Frequency Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS." U.S. Securities and Exchange Commission, 4 April 2008. Web. 21 May 2015. http://www.sec.gov/divisions/marketreg/nmsfaq610-11.htm ("block trade FAQ").

exchange to establish, maintain, and enforce written rules that: (1) requires its members reasonably avoid: (i) displaying quotations that lock or cross any protected quotation in an NMS stock; and (ii) displaying manual quotations that lock or cross any quotation in an NMS stock disseminated pursuant to an effective national market system plan.[30] Moreover, the Trade-At Prohibition of the upcoming Tick Size Pilot Program would, in certain securities, "(1) prevent a trading 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."[31]

The Exchange believes that SNAP Cycles are reasonably designed to comply with the requirements of Rule 611. As discussed above, pursuant to SNAP routing event #1, the Exchange would route IOC/ISOs for Rule 611 compliance purposes and delay SNAP executions to maximize the probability that routed IOC/ISOs cancelled by the away markets would be able to participate in the SNAP execution at the Exchange. As such, like the block trade FAQ, the Exchange believes that IOC/ISOs routed during the stage 3 Pricing and Satisfaction Period would be considered to have been simultaneously routed relative to the delayed SNAP executions, in compliance with Rule 611(b)(6), and, thus, the Exchange would not be required to take an additional market snapshot at the time of the delayed SNAP executions.[32]

The Exchange also believes that SNAP Cycles are reasonably designed to comply with Rule 610(d). Specifically, the routing away of SNAP Eligible Orders pursuant to SNAP routing event #2 would minimize the probability that unexecuted SNAP Eligible Orders that are being transitioned to automated trading would lock or cross the market, in violation of CHX rules adopted pursuant to Rule 610(d),[33] thereby eliminating the need to cancel such orders that could not otherwise be price slid or routed away during the stage 5 Transition to the Open Trading State. In light of the aggressive pricing requirement to initiate a SNAP Cycle and the likelihood that both SNAP routing event #1 and SNAP routing event #2 would be triggered in any given SNAP Cycle, the Exchange believes that effecting a SNAP execution delay, regardless of the SNAP routing event(s) triggered, is reasonable from an operational perspective, as such consistent treatment would simplify the SNAP routing process.

Moreover, since the Trade-At Prohibition of the upcoming Tick Size Pilot Program will eventually require the Exchange to route orders in a manner similar to SNAP routing event #2 as a precondition to any SNAP executions within the Matching System (and not merely to execute

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30 17 CFR 242.610(d).

31 See supra note 26.

32 See supra note 29.

33 See CHX Article 20, Rule 6.

surplus orders at the SNAP Price, as currently proposed),[34] the Exchange believes that a SNAP execution delay will have to be effected to maximize the probability that routed IOC/ISOs cancelled by the away markets would be able to participate in the SNAP execution at the Exchange.[35] As such, in anticipation of the upcoming Tick Size Pilot Program, the Exchange submits that effecting a SNAP execution delay, regardless of the SNAP routing event(s) triggered, is reasonable from an operational and regulatory perspective.

Rule 201 requires trading centers, such as the Exchange, to establish, maintain and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order with respect to a covered security at a price that is less than or equal to the current NBB ("impermissible price") if the price of that security decreases by 10% or more from the security's closing price on the listing market as of the end of regular trading hours on the prior day.[36]

In light of the aforementioned tension between the Regulation NMS provisions and Rule 201, the Exchange does not believe that SNAP Cycles can be reasonably designed to comply with Rule 201. If SNAP Eligible Orders are not routed away during the stage 3 Pricing and Satisfaction Period, there would be no SNAP execution delay, as SNAP executions would occur immediately after the stage 2 market snapshot. However, if SNAP Eligible Orders are routed away during the stage 3 Pricing and Satisfaction Period, the SNAP execution delay of up to 200 milliseconds between the stage 2 market snapshot and SNAP executions may result in SNAP Eligible Orders executing at impermissible prices. This could result if there are one or more SNAP Eligible Orders marked Sell Short executable at the SNAP Price and (a) a short sale price test restriction is in effect at the time of the stage 2 market snapshot and the NBB increases to a price at or above the SNAP Price during the SNAP execution delay or (b) a short sale price test restriction goes into effect during the SNAP execution delay.[37] Since the SNAP Cycle must be compliant

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34 Prior to the operative date of the Tick Size Pilot Program, the Exchange anticipates filing a proposed rule change pursuant to Rule 19b-4 under the Act to, among other things, modify SNAP routing event #2 to eliminate the surplus order requirement. The Exchange will also amend this exemptive relief request or submit a new exemptive relief request, as appropriate, to address any changes to SNAP routing event #2.

35 See supra note 26.

36 See Securities Exchange Act Release No. 61595 (Feb. 26, 2010), 75 FR 11232 (Mar. 10, 2010) (amending Rules 201 and 200 of Regulation SHO to adopt a short sale price test restriction and "short exempt" marking requirement). See also Securities Exchange Act Release No. 63247 (Nov. 4, 2010), 75 FR 68702 (Nov. 9, 2010).

37 SNAP Eligible Orders marked Sell Short priced at or below the NBB ascertained from the stage 2 market snapshot during a short sale price test restriction would always be repriced to one minimum price increment above the NBB ascertained from the stage 2 market snapshot. If, however, SNAP Eligible Orders marked Sell Short have limit prices

with all federal securities laws and regulations, including Regulation NMS and Rule 201, the Exchange submits that exemptive relief is appropriate.

As a result, to support this innovative product and in light of the investor interest in a trading functionality that deemphasizes speed as a key to trading success,[38] the Exchange is respectfully requesting relief from the requirements of Rule 201. Specifically, the Exchange respectfully requests that the Staff grant relief from "current" NBB requirement of the short sale price test restriction of Rule 201 for those rare instances in which the SNAP execution delay caused by the Satisfaction Period may have the potential to cause SNAP Eligible Orders marked Sell Short during a short sale price test restriction in the subject security to be executed at an impermissible price. We note that SNAP Eligible Orders marked Sell Short with limit prices at or below the NBB ascertained from the stage 2 market snapshot would always be repriced to one minimum pricing increment above the NBB ascertained from the stage 2 market snapshot during a short sale price test restriction in the subject security.[39] Also, our request is limited to those rare instances in which all orders that have been checked for compliance with Rule 611, Rule 610(d), the Trade-At Prohibition of the upcoming Tick Size Pilot Program and Rule 201 based on the stage 2 market snapshot have been confirmed for routing, but there is an increase in the NBB during the SNAP execution delay or a short sale price test restriction goes into effect during a SNAP execution delay.

The Exchange submits that granting exemptive relief from Rule 201 would be in the public interest. The Exchange believes that there is a compelling market need for an exchange-based trading functionality that promotes bulk executions, while minimizing information leakage and speed advantages.[40] While the Exchange has taken great care to harmonize SNAP Cycles with the current regulatory framework, the Exchange believes that the innovation presented by SNAP Cycles necessarily means that it cannot be compliant with the Regulation NMS provisions and Rule 201, without either seriously compromising its practical effectiveness or exemptive relief. That is, without exemptive relief from Rule 201, SNAP executions would always be required to

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above the NBB ascertained from the stage 2 market snapshot, the Exchange would not reprice such orders for Rule 201 compliance purposes.

38 CHX also notes that on June 5, 2014, Chair White noted, among other things, that a key question concerning trading venues is whether they have sufficient opportunity and flexibility to innovate successfully with initiatives that seek to deemphasize speed as a key to trading success in order to further serve the interests of investors. Chair White specifically noted possible solutions to include frequent batch auctions designed to minimize speed advantages. See Mary Jo White, Chair, Securities and Exchange Commission, Speech at Sandler O'Neil & Partners L.P. Global Exchange and Brokerage Conference (June 5, 2014).

39 See supra note 21.

40 Id; see supra note 2.

occur immediately after the stage 2 market snapshot, which would expose the most aggressively priced SNAP Eligible Orders on the SNAP CHX book to an unjustifiable risk of not receiving an execution, if they were to be routed away, pursuant to either SNAP routing event #1 or SNAP routing event #2, and cancelled by the away market. The Exchange believes that such an inequitable result would irreparably undermine SNAP Cycles as a viable trading functionality that addresses a market need and, thus, granting exemptive relief from Rule 201 is appropriate.

Moreover, the Exchange believes that implementation of the SNAP Cycle would not encourage manipulative practices with regards to short sales. Specifically, since the stage 2 market snapshot would only be taken after the Exchange has stopped accepting SNAP Eligible Orders for inclusion in the instant SNAP Cycle, market participants would not be able to include a rush of limit orders marked Sell Short to participate in the instant SNAP Cycle, so as to take advantage of a favorable NBB ascertained from the stage 2 market snapshot. Also, since SNAP Eligible Orders cannot be cancelled by an order sender during the SNAP execution delay, nor during any other time during the SNAP Cycle, market participants would not be able to cancel limit orders marked Sell Short in response to an unfavorable change in the NBB during the SNAP execution delay.

As part of this request, the Exchange represents that it will:

1. Have systems in place to reasonably ensure that:

    1.1. the SNAP execution delay is effected pursuant to the relevant CHX rules, as stated herein and in the Rule 19b-4 proposed rule change;[41]

    1.2. all SNAP Eligible Orders marked Sell Short that are priced at or below the NBB ascertained from the stage 2 market snapshot when a short sale price test is in effect are repriced to a permissible price, in preparation for SNAP executions during the stage 4 Order Matching Period;

2. Regularly monitor the repricing of orders as described under paragraph 1.2, document any issues and immediately escalate such issues for remediation to senior compliance staff;

3. Surveil:

    3.1. to identify any unnecessary or unreasonable delay in order execution in the SNAP Cycle and notify Staff if the time period between the stage 2 market snapshot and the stage 4 execution increases for any reason or if there is an execution delay during any SNAP Cycle due to reasons other than as permitted by CHX Rules, as stated herein, and as stated in the Rule 19b-4 proposed rule change;[42]

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41 See supra note 2.

42 Id.

3.2. for compliance with the marking requirements of Rule 200 of Regulation SHO in a manner consistent with the Exchange's current practice;

3.3. to identify potential impact of this relief on price movements of the subject securities;[43]

4. Promptly notify the Staff of any Rule 201 related issues regarding the SNAP Cycle and the remediation thereof;

5. Make, keep and furnish promptly upon request the books and records as required by the federal securities laws;

6. Comply with all of the requirements of Rule 201 (other than the proposed relief, if granted, herein); and

7. In connection with the implementation of the SNAP functionality, the Exchange will remind Participants of their marking obligations under Rule 200 of Regulation SHO, in particular Participants' marking obligations under Rule 200(g)(2) and their obligations to ensure the appropriate use of provisions (c) and (d) of Rule 201 when marking orders Short Exempt.[44]

Accordingly, the Exchange respectfully requests that the Commission grant exemptive relief from the short sale price restriction under Rule 201, pursuant to Rule 201(f) of the Act, based on the facts and representations set forth herein and as proposed,[45] as the Exchange believes that exemptive relief is necessary and appropriate, in the public interest, and consistent with the protection of investors.

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43 In sum, the Exchange will compare SNAP Eligible Orders marked Sell Short that were executed during a short sale price test restriction against the NBB at time of -1- the stage 2 market snapshot and -2- SNAP executions during the stage 4 Order Matching Period.

44 See CHX Article 1, Rule 2(b)(3)(E).

45 See supra note 2.

If you have any questions regarding this request, please contact me or the Exchange's General Counsel, James Ongena, at (312) 663-2937 or via email at jongena@chx.com.

Sincerely,

Albert J. Kim
VP and Associate General Counsel