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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104625]

Order Granting Limited Exemption Pursuant to Rule 612(d) of Regulation NMS to Cboe BYX Exchange, Inc. from Rule 612 of Regulation NMS

January 16, 2026.

I. Introduction

Pursuant to Rule 612(d) of Regulation NMS, Cboe BYX Exchange, Inc. ("BYX" or the "Exchange") requests exemptive relief with respect to Retail Price Improvement Orders ("RPI Orders")[1] and Enhanced Retail Price Improvement Orders ("Enhanced RPI Orders" and collectively with RPI Orders, "RPI Interest"),[2] each of which may be priced in sub-penny increments, from the provisions of Rule 612 of Regulation NMS (the "Sub-Penny Rule")[3] that prohibit a national securities exchange from accepting, displaying, or ranking bids, offers, orders and indications of interest in an increment smaller than the minimum pricing increment.[4]

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1 Under the Exchange's Retail Price Improvement Program ("RPI Program"), an RPI Order consists of non-displayed interest on the Exchange that is eligible to interact with incoming Retail Orders (as defined in BYX Rule 11.24(a)(2)). To be executable, an RPI Order for an NMS stock that is priced at or above $1.00 must be priced at least $0.001 better than the Protected NBB or Protected NBO and may be priced in $0.001 increments (e.g., $10.001). To be executable, an RPI Order for an NMS stock that is priced below $1.00 must be priced at least $0.0001 better than the Protected NBB or Protected NBO and may be priced in $0.0001 increments (e.g., $0.5001). An RPI Order may be entered as a limit order, in a sub-penny increment with an explicit limit price, or as a Primary Pegged Order (as defined in BYX Rule 11.9(c)(8)(A)) with a positive offset (for buy orders) or a negative offset (for sell orders). See Proposal, infra note 9, at pages 14-17 and 170 of 176 (amending BYX Rule 11.24(a)(3) and describing such amendments).

2 Under the RPI Program, an Enhanced RPI Order is an RPI Order is designated with a "Step-Up Range instruction." A "Step-Up Range instruction" is an optional, non-displayed instruction that is added to (for buy orders) or subtracted from (for sell orders) the ranked price of an RPI Order and provides a maximum execution price up to which (for buy orders) or minimum execution price down to which (for sell orders) a User is willing to execute against contra-side Retail Orders. The Step-Up Range instruction may be priced in increments of $0.001 for securities priced at or above $1.00 and securities priced below $1.00. Like RPI Orders, an Enhanced RPI Order may be entered as a limit order, in a sub-penny increment with an explicit limit price, or as a Primary Pegged Order (as defined in Rule 11.9(c)(8)(A)) with an Offset Amount. See Proposal, infra note 9, at pages 17-20 and 170-176 of 176 (amending BYX Rule 11.24 to add BYX Rule (a)(4) and describing such amendments).

3 17 CFR 242.612.

4 See Letter from Courtney Smith, Senior Counsel, Cboe Global Markets – North American Equities to Vanessa Countryman, Secretary, Commission (Sept. 30, 2025) ("Exemption Request"). On September 18, 2024, the Commission issued Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620

The Securities and Exchange Commission ("Commission") previously granted exemptive relief from the Sub-Penny Rule to BYX with respect to RPI Orders when it approved BYX's RPI Program, which permits the Exchange to accept and rank certain quotes and orders from certain participants in sub-penny increments as small as $0.001.[5] On March 13, 2025, the Exchange filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[6] and Rule 19b-4 thereunder,[7] a proposed rule change to modify the definition and operation of RPI Orders and to introduce Enhanced RPI Orders, as well as to expand the RPI Program to include securities priced below $1.00. The proposed rule change was published for comment in the Federal Register on March 20, 2025.[8] On September 29, 2025, the Exchange

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(Oct. 8, 2024) (Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders) ("Final Rules"), which, among other things, promulgated amendments to Rule 612 of Regulation NMS. The amendments to Rule 612 are required to be implemented on the first business day of November 2026. See Securities Exchange Act Release No. 104172 (Oct. 31, 2025), 90 FR 51418 (Nov. 17, 2025) at 51418. The Final Rules modified the numbering of certain provisions of Rule 612, and the citations to the provisions of Rule 612 in this order are to the provisions as numbered in the Final Rules. When the Exchange filed the Exemption Request, certain of the amendments to Rule 612 under the Final Rules were temporarily stayed, and the Exchange's Exemption Request referenced provisions of Rule 612 as in effect prior to the Final Rules. See Exemption Request at note 1; see also Securities Exchange Act Release No. 101899 (Dec. 12, 2024) (File No. S7-30-22) (Order Granting Partial Stay In the Matter of the Motion by Nasdaq, Inc., The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Cboe Global Markets, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc. For Stay of Effect of Amendments to Rules 610 and 612 of Regulation NMS).

5 See Securities Exchange Act Release No. 87154 (Sept. 30, 2019), 84 FR 53183 (Oct. 4, 2019), SR-CboeBYX-2019-014 ("RPI Approval Order"), at 53185-86; Securities Exchange Act Release No. 68303 (Nov. 27, 2012), 77 FR 71652 (Dec. 3, 2012), SR-BYX-2012-019 ("RPI Pilot Approval Order"), at 71657-58.

6 15 U.S.C. 78s(b)(1).

7 17 CFR 240.19b-4.

8 See Securities Exchange Act Release No. 102681 (Mar. 14, 2025), 90 FR 13240. On April 29, 2025, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. See Securities Exchange Act Release No. 102956, 90 FR 19013 (May 5, 2025). The Commission designated June 18, 2025 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change. On May 6, 2025, the Exchange submitted Amendment No. 1 to the proposed rule change. On June 16, 2025, the Exchange submitted Amendment No. 2 to the proposed rule change. On June 17, 2025, the Exchange withdrew Amendment Nos. 1 and 2, and submitted Amendment No. 3 to the proposed rule change. On June 18, 2025, the Commission published notice of Amendment No. 3 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act, to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 3. See Securities Exchange Act Release No. 103291, 90 FR 26843 (June 24, 2025). On September 2, 2025, the Commission designated November 15, 2025 as the date by which the Commission shall either approve or disapprove the proposed rule change. See Securities Exchange Act Release No. 103819, 90 FR 43006 (Sept. 5, 2025).

filed Amendment No. 4 to the proposed rule change, which was deemed approved on November 15, 2025.[9] BYX submitted the Exemptive Request to reflect the modified RPI Order and the newly introduced Enhanced RPI Orders.

II. Limited Exemption from the Sub-Penny Rule

Pursuant to its authority under Rule 612(d) of Regulation NMS,[10] the Commission hereby grants the Exchange a limited exemption from the Sub-Penny Rule to operate its RPI Program as modified by the Proposal. For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors.

When the Commission adopted the Sub-Penny Rule, the Commission identified a variety of problems caused by sub-penny quoting that the Sub-Penny Rule was designed to address:

- If investors' limit orders lose execution priority for a nominal amount, investors may, over time, decline to use them, thus depriving the markets of liquidity.
- When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule[11] could be undermined.
- Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.
- Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.

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9 See Securities Exchange Act Release No. 104210 (Nov. 18, 2025), 90 FR 52727 (Nov. 21, 2025). Amendment No. 4 amended and superseded Amendment No. 3 in its entirety. In Amendment No. 4, the Exchange provided additional detail regarding the proposed amendment to Exchange Rule 11.12 (Priority of Orders). The full text of Amendment No. 4 is available on the Commission's website at https://www.sec.gov/comments/sr-cboebyx-2025-007/srcboebyx2025007-665327-1988394.pdf ("Proposal").

10 17 CFR 242.612(d).

11 See Financial Industry Regulatory Authority, Inc. Rule 5320 (Prohibition Against Trading Ahead of Customer Orders).

- Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[12]

When the Commission approved the Exchange's RPI Program, it granted the Exchange a limited exemption from the Rule 612 prohibition on a national securities exchange accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01.[13] The Commission recognized that the vast majority of marketable retail orders are internalized by OTC market makers, and to the extent that OTC market makers offer price improvement over the NBBO, it is typically offered in sub-penny amounts. The Commission stated that OTC market makers typically select a sub-penny price for a trade without quoting at that exact amount or accepting orders from retail customers seeking that exact price. The Commission further recognized that exchanges, and exchange member firms, cannot compete for marketable retail order flow on the same basis because it would be impractical for exchange electronic systems to generate sub-penny executions without exchange liquidity providers or retail brokerage firms having first submitted sub-penny orders or quotations, which the Sub-Penny Rule expressly prohibits.[14]

Modifications to the Exchange's RPI Program made by the Proposal, which are described in detail in the Proposal and in the Exchange's Exemption Request, do not raise any new concerns regarding the problems the Sub-Penny Rule was designed to address, and the limited exemption granted in this order should continue to promote competition between exchanges and

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12 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (Adopting Release for Regulation NMS). See also RPI Approval Order, supra note 5, at 53186; RPI Pilot Approval Order, supra note 5, at 71657.

13 See RPI Approval Order, supra note 5, at 53186; RPI Pilot Approval Order, supra note 5, at 71657-58. In the Final Rules, the Commission stated that national securities exchanges' retail liquidity programs that operate pursuant to Commission exemptions that either permit certain quoting and trading in increments of $0.001, or aggregate order flow at the midpoint, will be able to continue to operate without interruption and without changes to exchange rules or the grant of further exemptive relief by the Commission. See Final Rules, supra note 4, at 81643.

14 See RPI Pilot Approval Order, supra note 5, at 71658. See also RPI Approval Order, supra note 5, at 53186. See also Final Rules, supra note 4.

OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. As is currently the case, under the RPI Program as modified by the Proposal, sub-penny prices will not be disseminated through the consolidated quotation data stream,[15] which should avoid quote flickering and reduced depth at the inside quotation.[16]

Furthermore, granting this limited exemption would not reduce incentives for market participants to display limit orders. Enabling the Exchange to continue to compete for retail order flow through the RPI Program, as modified by the Proposal, should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders on a public national securities exchange. To the extent that the RPI Program may raise Manning Rule and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.[17]

This limited exemption from the Sub-Penny Rule is limited solely to the operation of the RPI Program by the Exchange. This exemption does *not* extend beyond the scope of Exchange Rule 11.24. In addition, this exemption is conditioned on the Exchange continuing to conduct the RPI Program, in accordance with Exchange Rule 11.24 and substantially as described in the Exchange's Exemption Request and the Proposal. Any further changes to Exchange Rule 11.24 may cause the Commission to reconsider this exemption.

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15 See Proposal at pages 139-142 of 176 (discussing dissemination of the Retail Liquidity Identifier).

16 See RPI Pilot Approval Order, supra note 5, at 71658.

17 Id.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Rule 612(d) of Regulation NMS, that the Exchange is granted a limited exemption from Rule 612 of Regulation NMS with respect to the operation of the RPI Program as set forth in Exchange Rule 11.24 to allow the Exchange to accept and rank RPI Interest priced equal to or greater than $1.00 per share in increments of $0.001.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

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[18] 17 CFR 200.30-3(a)(12) and 17 CFR 200.30-3(a)(83).