

discriminatory because the fees apply equally to all individuals and firms required to report information in the CRD system and comply with continuing education. The proposal will result in the same regulatory fees being charged to all Members required to report information to CRD and comply with continuing education and for services performed by FINRA regardless of whether such Members are FINRA members. Further, the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes the proposed FINRA Annual System Processing Fee and the Continuing Education Regulatory Element Session Fee do not impose an undue burden on competition because the fees apply equally to all individuals and firms required to report information in the CRD system and comply with continuing education. The proposal will result in the same regulatory fees being charged to all Members required to report information to CRD and comply with continuing education and for services performed by FINRA regardless of whether such Members are FINRA members. Further, the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.¹³ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in

furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2025-45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-ISE-2025-45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-ISE-2025-45 and should be submitted on or before February 12, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

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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

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,

Continued

¹³ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁴ 17 CFR 200.30-3(a)(12).

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,

2024, the Commission issued Securities Exchange Act Release No. 101070 (Sept. 18, 2024), 89 FR 81620 (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 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 Rule¹¹ 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.

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).

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/sr-cboebyx2025007-665327-1988394.pdf> (“Proposal”).

¹⁰ 17 CFR 242.612(d).

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

• Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.

• 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 OTC market makers in a manner that is reasonably designed to minimize the problems that

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.

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.

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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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.*

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

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-104626; File No. SR-NASDAQ-2026-003]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule for Exchange-Traded Products To Add Class ETF Shares, Eliminate Prorated Refunds for Liquidations, and Make Modifications to the Designated Liquidity Provider and Market Quality Supporter Incentive Programs

January 16, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 12, 2026, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees and incentives for Exchange-Traded Products (“ETPs”) by: (i) adding Class ETF Shares (as defined below) to the listing fees and pricing programs applicable to other Nasdaq-listed ETPs; (ii) eliminating prorated refunds for ETP liquidations; (iii) modifying how certain market quality metrics in the Designated Liquidity Provider (as defined below) and Market Quality Supporter (as defined below) programs will be calculated; and (iv) modifying how Low Volume ETPs (as defined below) will be measured for purposes of Market Quality Supporter assignments.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rulefilings>, and at the principal office of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees and incentives for ETPs by: (i) adding Class ETF Shares³ listed pursuant to Rule 5703 to the Exchange's listing fees and pricing programs applicable to other Nasdaq-listed ETPs; (ii) eliminating pro-rated refunds for ETP liquidations; (iii) modifying how certain market quality metrics in the Designated Liquidity Provider⁴ (“DLP”) and Market Quality Supporter⁵ (“MQS”) programs will be calculated; and (iv) modifying

³ The term “Class ETF Shares” means shares of the ETF Class issued by a Multi-Class Fund. The term “ETF Class” means the class of exchange-traded shares of a Multi-Class Fund that (i) operates as an exchange-traded fund pursuant to exemptive relief granted by order under the Investment Company Act of 1940 (“Multi-Class Fund Exemptive Relief”), and (ii) is in compliance with the requirements of Rules 5703(d)(ii) and 5703(d)(2)(A)(i)(2) on an initial and continued listing basis. The term “Multi-Class Fund” means a registered open-end management company that (i) pursuant to Multi-Class Fund Exemptive Relief, issues Class ETF Shares and one or more classes of shares that are not exchange traded, and (ii) is in compliance with the conditions and requirements of the Multi-Class Fund Exemptive Relief. See Rule 5703(c)(1)–(3).

⁴ A “Designated Liquidity Provider” is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. A DLP is selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded products, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. For purposes of the DLP program, a security may be designated as a “Qualified Security” if: (A) it is an exchange-traded product listed on Nasdaq pursuant to Nasdaq Rules 5703, 5704, 5705, 5710, 5711, 5713, 5715, 5720, 5735, 5745, 5750 or 5760; and (B) it has one Designated Liquidity Provider. See Equity 7, Section 114(f)(1) and (2).

⁵ A “Market Quality Supporter” has committed to maintain minimum performance standards in Low Volume ETPs as defined in Equity 7, Section 114(g)(4)(A). A MQS is selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded products, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. See Equity 7, Section 114(g)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.