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March 11, 2026

Submitted electronically

Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, N.E
Washington, D.C. 20549-1090

Re: Exemptive Application Pursuant to Rule 612 of Regulation NMS

Dear Ms. Countryman:

Pursuant to Rule 612 of Regulation NMS[1] under the Securities Exchange Act of 1934 (the "Act"), Cboe EDGX Exchange, Inc. ("EDGX" or the "Exchange") respectfully requests that the Securities and Exchange Commission (the "Commission") exempt EDGX and the proposed Retail Price Improvement Orders ("RPI Orders" or "RPI Interest") entered by EDGX Members onto the Exchange, which may be priced in sub-penny increments, from the provisions of Regulation NMS Rule 612 (the "Sub-Penny Rule") that prohibit a national securities exchange from accepting, displaying, or ranking certain orders based on an increment smaller than the minimum pricing increment.[2]

The Exchange's affiliate, Cboe BYX Exchange, Inc. ("BYX"), which operates a substantially similar retail liquidity program, previously sought, and received, a limited exemption from Rule 612 of Regulation NMS from the Commission in connection with its pilot program proposal, its proposal to make the RPI Program permanent, and its proposal to introduce an Enhanced RPI Order.[3] Recently, the Exchange filed a proposed rule change to introduce an RPI

1 17 CFR 242.612.

2 17 CFR 242.612(a) – (c).

3 See Securities Exchange Act Release No. 104210 (November 18, 2025), 90 FR 52727 (November 18, 2025), SR-CboeBYX-2025-007 ("Notice of Deemed Approval of BYX Enhanced RPI") and Securities Exchange Act Release No. 104625 (January 16, 2026), 91 FR 2813 (January 22, 2026) ("BYX Rule 612 Exemptive Relief"). See also Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012), SR-BYX-2012-019 ("BYX Pilot Approval Order"); Securities Exchange Act. Release No. 87154 (September 30, 2019), 84 FR 53183 (October 4, 2019), SR-CboeBYX-2019-014 ("Order Approving a Proposed Rule Change to Make Permanent the Exchange's Pilot Retail Price Improvement RPI Program, Rule 11.24, Which is Set to Expire on September 30, 2019, and Order Granting Limited Exemption Pursuant to Rule 612(c) of Regulation NMS").

Program on the Exchange.[4] As such, the Exchange now seeks a limited exemption from Rule 612 of Regulation NMS form the Commission in connection with the proposed RPI Program on EDGX. The Exchange notes that any distinctions between the proposed EDGX RPI Program and the the retail liquidity program on BYX do not cause the request for exemptive relief on EDGX to differ substantively from the request for relief that was granted to BYX.[5] The Exchange believes that its proposed RPI Program is necessary or appropriate for the public interest, consistent with the protection of investors, and will help to encourage additional on-exchange retail activity and retail liquidity provision, thereby enhancing price competition for retail orders. Accordingly, the Exchange respectfully requests that the Commission grant the Exchange an exemption from the Sub-Penny Rule for RPI Interest in securities priced at or above $1.00.

Background

On September 30, 2025, the Exchange filed a proposal to introduce an RPI Program on the Exchange.[6] On September 30, 2025, the RPI Proposal was noticed by the Commission and on October 3, 2025, the RPI Proposal was published in the Federal Register. On December 19, 2025, the Commission issued an Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposal.[7] On December 22, 2025, the Exchange filed Amendment No. 1 to the Proposal.[8] On January 8, 2026, the Exchange withdrew Amendment No. 1 and filed Amendment No. 2 to the Proposal.[9] On January 12, 2026, the Exchange withdrew Amendment No. 2 and filed Amendment No. 3 to the Proposal. On January 29, 2026, the Exchange filed partial Amendment No. 4 to the Proposal.[10] In conjunction with the RPI Proposal, the Exchange intends to submit a request for assurances from the Staff that it will not recommend enforcement action pursuant to

4 See Securities Exchange Act Release No. 104153 (September 30, 2025), 90 FR 48098 (October 3, 2025), SR-CboeEDGX-2025-072 (“RPI Proposal”).

5 The BYX retail liquidity program (“BYX RPI Program”) differs from the proposed RPI Program in that the BYX RPI Program offers an Enhanced RPI Order type, is available in securities priced below $1.00 in addition to securities priced at or above $1.00, does not offer a MidPoint Peg RPI Order (discussed *infra*), requires Retail Orders to be immediate-or-cancel (“IOC”), and permits RPI Orders to execute upon entry. Further, BYX has updated its definition of Retail Order to reflect the revised definition on the Exchange that was introduced through a recent approved filing. See Securities Exchange Act Release No. 104705 (January 28, 2026), 91 FR 4650 (February 2, 2026), SR-CboeEDGX-2025-035 (“EDGX Retail Order Definition Filing”).

6 Supra note 4.

7 See Securities Exchange Act Release No. 104470 (December 19, 2025), 90 FR 60784 (December 29, 2025), SR-CboeEDGX-2025-072 (“Order Instituting Proceedings”).

8 See Letter from Courtney Smith (December 22, 2025) (“Amendment No. 1”).

9 See Letter from Matthew Iwamaye (January 8, 2026) (“Amendment No. 2”).

10 See Letter from Matthew Iwamaye (January 29, 2026) (“Amendment No. 4”).

Regulation NMS Rule 602 (the "Quote Rule")[11] with respect to the Exchange's planned dissemination of a Retail Liquidity Identifier containing certain information regarding RPI Interest pursuant to the RPI Program (the "Rule 602 Request").

The proposed RPI Program is designed to attract retail order flow to the Exchange and allow such order flow to receive price improvement over the Protected NBBO. When there is RPI Interest priced at least $0.001 better than the Protected NBB or Protected NBO for a particular security priced at or above $1.00, the Exchange will disseminate its RLI to indicate that such interest is available on the Exchange.[12] Retail Member Organizations ("RMOs")[13] will be able to submit a Retail Order[14] to the Exchange, which interacts with available contra-side RPI Interest (to the extent possible) and may interact with other price improving liquidity on the EDGX Book,[15] depending on the Retail Order's instructions.

Below is a description of key aspects of the proposed RPI Program.

- **Participants and Order Instructions** – as described in Rule 11.21 and in the RPI Proposal, the RPI Program provides for a class of market participants known as RMOs and two order types, including a Retail Price Improvement ("RPI") Order.
    - *Retail Member Organization*. An RMO is a Member that has been approved by the Exchange under Rule 11.21 to submit Retail Orders. To qualify as an RMO, a Member must conduct retail business or handle retail orders on behalf of another broker-dealer. An RMO must submit an attestation that substantially all orders it submits will qualify as a Retail Order and provide supporting documentation sufficient for the Exchange to determine whether the applicant's order flow would meet the requirements of the Retail Order definition. The Exchange may disqualify an RMO for submitting orders designated as Retail Orders that fail to meet the requirements of the RPI Program, subject to the process set forth in Rule 11.21(c).
    - *Retail Order*. A Retail Order is an agency order, principal order (subject to the requirements of Rule 11.21(j)), or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by an RMO, provided that no change is made to the terms of the order with respect to price or side of the market and the order does not originate from a

11 17 CFR 242.602.

12 See proposed Rule 11.21(e) ("Retail Liquidity Identifier").

13 See Rule 11.21(a)(1) ("Retail Member Organization").

14 See proposed Rule 11.21(f) ("Retail Order Designation").

15 See Rule 1.5(d). The term "EDGX Book" shall mean the System's electronic file of orders.

trading algorithm or any other computerized methodology. A Retail Order entered principally must also satisfy the requirements in 11.21(j). A Retail Order shall operate in accordance with proposed Rule 11.21(f).

- *Retail Price Improvement ("RPI") Order.* An RPI Order consists of non-displayed interest on the Exchange that is identified as an RPI Order. RPI Orders are eligible to trade only with incoming Retail Orders submitted by an RMO. An RPI Order for a security priced at or above $1.00 is only executable at prices at least $0.001 better than the Protected NBB or Protected NBO and may be priced in $0.001 increments (e.g., $10.001). An RPI Order will be limited to executing at prices equal to or greater than $1.00 per share. An RPI Order is ineligible to execute at prices equal to or inferior to the Protected NBB (for buy orders) or Protected NBO (for sell orders), however an RPI Order may be entered with a limit price that is equal to or inferior to the Protected NBB or Protected NBO. An RPI Order that is ineligible to execute because it is priced equal to or inferior to the Protected NBB or Protected NBO will not be canceled and will become eligible to execute against Retail Orders should the RPI order become priced better than the Protected NBB (for buy orders) or Protected NBO (for sell orders) at a later time. An incoming RPI Order will not be eligible to interact with a resting Retail Order on the EDGX Book and upon entry will post to the EDGX Book to execute against later-arriving Retail Orders.

  An RPI Order may be entered as a limit order, in a sub-penny increment with an explicit limit price, as a MidPoint Peg Order (as defined in Rule 11.8(d)) (an "RPI MidPoint Peg Order"), or as a Primary Pegged Order (as defined in Rule 11.6(j)(2)). An RPI Order that is also a Primary Pegged Order ("RPI Primary Pegged Order") must be entered with a positive (for buy orders) or negative (for sell orders) offset ("Offset Amount"). The ranked price of an RPI Primary Pegged Order is the price that results after the application of the Offset Amount, as described in Rule 11.6(j)(2). An RPI Primary Pegged Order may have its Offset Amount entered in pricing increments of $0.001. An RPI MidPoint Peg Order and an RPI Primary Pegged Order will not execute during a locked market.

  The System will monitor whether RPI Orders, adjusted by any Offset Amount and subject to the limit price, are eligible to interact with incoming Retail Orders. An RPI Order remains non-displayed in its entirety, including any applicable Offset Amount and the limit price. Any User is permitted, but not required, to submit RPI Orders. An RPI Order may be an odd lot, round lot or mixed lot. An RPI Order may be entered as a Post Only or Book Only order and is not eligible for routing.

- **Retail Order Designations** – pursuant to Rule 11.21(f), RMOs may designate how a Retail Order would interact with available contra-side interest as follows:

- A Type 1 Retail Order to buy (sell) must be designated as IOC and will interact with available contra-side RPI Interest and other price improving contra-side interest but will not interact with other available contra-side interest in the System[16] that is not offering price improvement or route to other markets. The portion of a Type 1-designated Retail Order that does not execute against contra-side RPI Orders or other price improving liquidity will be immediately and automatically cancelled.

- A Type 2 Retail Order to buy (sell) will be executed, posted to the EDGX Book, or cancelled, according to the User's instructions. A Type 2-designated Retail Order will be ineligible to execute with a resting RPI Order that is not priced better than the Protected NBB or Protected NBO. A Type 2-designated Retail Order can either be submitted as an EDGX Only Order or as an order eligible for routing pursuant to Rule 11.11.

- **Retail Liquidity Identifier ("RLI")** – the Exchange will disseminate the RLI through proprietary data feeds and consolidated data streams (i.e., pursuant to the Consolidated Quotation Plan or Nasdaq UTP Plan), as appropriate, when RPI Interest priced at least \$0.001 better than the Protected NBB or Protected NBO for a particular security is available in the System for securities priced at or above \$1.00. The RLI will reflect the symbol and side (buy or sell) of the RPI Interest but will not include the price or size of such interest. The Retail Liquidity Identifier will only be disseminated when RPI Interest is priced better than the Protected NBB or Protected NBO and will not disseminate if the price of the Protected NBB or Protected NBO moves such that the RPI Interest is no longer priced higher than the Protected NBB or lower than the Protected NBO.

- **Priority** – as provided in proposed Rule 11.21(g), RPI Orders in the same security shall be ranked according to price then time of entry into the System, as provided for in Rule 11.9 and executions shall occur in price/time priority in accordance with Rule 11.9. Any remaining unexecuted interest in RPI Orders will remain available to interact with other contra-side incoming Retail Orders. Any remaining unexecuted portion of the Retail Order will cancel, execute, or post in accordance with proposed Rule 11.21(f). RPI Interest is ineligible to execute at prices that are equal to or inferior to the Protected NBB or Protected NBO. RPI Interest that is priced equal to or inferior to the Protected NBB or Protected NBO will not be cancelled and will become eligible to execute against Retail Orders should

16 See Rule 1.5(cc). The term "System" shall mean the electronic communications and trading facility designated by the Board of Directors of the Exchange through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.

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the RPI Interest become priced better than the Protected NBB or Protected NBO at a later time.

- **Order Attribution –** an RMO may designate a Retail Order to be identified as a Retail Order on the EDGX Book Feed[17] on an order-by-order basis or on a port-by-port basis where the RMO's port is also designated as a Retail Order Port. An RMO that instructs the Exchange to identify all of its Retail Orders as such on a Retail Order Port will be able to override such setting and designate any individual Retail Order as Attributable[18] or Non-Attributable,[19] as set forth in Rule 11.6(a). A Retail Order will be designated as Retail when routed to an away Trading Center unless otherwise instructed by the RMO. All Retail Priority Orders, as defined in Interpretations and Policies .01 to Rule 11.9 will be identified as such on the EDGX Book Feed.

The Sub-Penny Rule Was Designed to Deal with Concerns Related to Public Display or Privative Communication of Quotes in Sub-Penny Increments, Concerns Which Are Not Implicated by the Retail Liquidity RPI Program's Non-Displayed RPI Interest.

Rule 612 of Regulation NMS establishes a minimum pricing increment for NMS stocks.[20] Specifically, where a quotation, order, or indication of interest is priced equal to order

17 See Rule 13.8 for a list of EDGX Book Feeds.

18 See Rule 11.6(a). The term "Attributable" means an instruction to designate an order for display (price and size) on the EDGX Book Feed that includes the Member's market participant identifier ("MPID").

19 See Rule 11.6(a)(1). The term "Non-Attributable" means that orders will be displayed (price and size) on the EDGX Book Feed on an anonymous basis by the System. Unless a User elects otherwise, all orders will be defaulted to Non-Attributable by the System.

20 See 17 CFR 242.612. On September 18, 2024, the Commission issued *Regulation NMS: Minimum Pricing Increments, Access Fees, and Transparency of Better Priced Orders* (the "NMS Amendments"), which, among other things, promulgated amendments to Rules 610 and 612 of Regulation NMS. See SEC Release No. 34-101070 (September 18, 2024), 89 FR 81620 (October 8, 2024). Between September 18, 2024, and October 30, 2024, petitions seeking review of the Final Rule were filed in the D.C. Circuit. See *We The Investors* et al., *v. SEC*, No. 24-1302 (D.C. Cir., filed Sept. 18, 2024); *We The Investors* et al., *v. SEC*, No. 24-1303 (D.C. Cir., filed Sept. 18, 2024); *We The Investors* et al. *v. SEC*, No. 24-1317 (D.C. Cir., filed Oct. 7, 2024); *We The Investors* et al. *v. SEC*, No. 24-1319 (D.C. Cir., filed Oct. 8, 2024); *Cboe Global Markets, Inc.,* et al., *v. SEC*, No. 24-1350 (D.C. Cir., filed Oct. 30, 2024). These actions were consolidated and on December 3, 2024, petitioners 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. filed with the Commission a motion to stay the effect of the Final Rule's amendments to Rules 610 and 612 pending resolution of their petition for review in the D.C. Circuit. The Commission granted a partial stay of the Final Rule, including the amendment to Rule 612 of Regulation NMS, on December 12, 2024. See SEC Release No. 34-101899 (December 12, 2024) ("Order Granting Partial Stay"). On October 31, 2025, the Commission issued an order granting temporary exemptive relief from certain compliance dates adopted under the Final Rule until the first business day of November

greater than $1.00 per share, the Rule prohibits market participants from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than: i) $0.01, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was greater than $0.015; or ii) $0.005, if the Time Weighted Average Quoted Spread for the NMS stock during the Evaluation Period was equal to or less than $0.015.[21] If the quotation, order, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001.[22]

In adopting Rule 612, the Commission sought mainly to limit the ability of a market participant to gain execution priority over a competing limit order by stepping ahead by an economically insignificant amount, thereby discouraging investors to display limit orders. Additionally, the Commission noted several other problems created by sub-penny quoting, namely: (1) the possible decrease in market liquidity attributable to a reduced use of limit orders by investors; (2) the erosion of customer protections such as exchange priority rules and the Manning Rule where market participants could gain execution priority over a limit order for an "infinitesimally small" increment;[23] (3) flickering quotations resulting from widespread sub-penny pricing and attendant best execution concerns; (4) a potential decrease in market depth at the inside; and (5) potentially increased incentives on the part of institutions, given reduced

2026. See SEC Release No. 104172 (October 31, 2025) ("Order Granting Temporary Exemptive Relief"). As noted in the NMS Amendments to Rule 612, 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 Rule at 81643.

21 17 CFR 242.612(b). See also 17 CFR 242.612(a).

22 17 CFR 242.612(c).

23 It is important to view the Commission's characterization of sub-penny increments as economically insignificant as tied closely to the particular systemic benefits that displayed limit orders bring to price competition. "[T]he Commission agrees with the many commenters who believed that prohibiting sub- penny quoting would deter the practice of stepping ahead of exposed trading interest by an economically insignificant amount. Limit orders provide liquidity to the market and perform an important price-setting function. If a quotation or order can lose execution priority because of economically insignificant price improvement from a later-arriving quotation or order, liquidity could diminish, and some market participants could incur greater execution costs." NMS Adopting Release at 37588. In other words, the increment was seen as trivial in relation to the important systemic risks it presented. It was price competition driven by displayed, exposed orders that concerned the Commission, not undisplayed orders like RPI Interest. Moreover, the Commission did not view the price improvement produced as a result of sub-penny executions as trivial. Rather, the language quoted infra at page 8 from the Adopting Release makes clear that the Commission recognized sub-penny executions as "generally beneficial." In any event, the Exchanges believe that the minimum price improvement available under the RPI Program, which would generally be expected to amount to a minimum of $0.50 on a 500 share order in a security priced at or above $1.00, would be meaningful to the small retail investor.

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depth at the inside, to rely on execution alternatives "away from the exchanges and Nasdaq" and the increased fragmentation that such incentives could drive.[24]

Importantly, Rule 612 also provides that the Commission may, by order, exempt any person, security, quotation, or order, or any class or classes of persons, securities, quotations, or orders, if the Commission determines that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.[25]

In this regard, the Exchange notes that the core concerns the Sub-Penny Rule was intended to address - displayed limit orders losing priority to a limit order for an infinitesimally small increment, and the additional concerns related to loss of liquidity at the inside, best execution, capacity, and fragmentation - relate to sub-penny *quoting* and not sub-penny *trading*. The Commission drew this distinction plainly in the NMS Adopting Release and went on to note the price improvement benefit experience by retail investors due to sub-penny executions:

> *The Commission believes at this time that trading in sub-penny increments does not raise the same concerns as sub-penny quoting. Sub-penny executions do not cause quote flickering and do not decrease depth at the inside quotation. Nor do they require the same systems capacity as would sub-penny quoting. In addition, sub-penny executions due to price improvement are generally beneficial to retail investors.*[26]

Under the proposed RPI Program, RPI Interest will not be displayed by the Exchange, as an RPI Order is required to be non-displayed. While Retail Orders may be displayed by the Exchange, a User may not enter a Retail Order in a sub-penny increment. Accordingly, the nature of the proposed order types simply does not give rise to the concerns addressed by the Sub-Penny Rule. While a Retail Order may execute at a sub-penny price should it match with a contra-side RPI Order, the Exchange believes the amount of price improvement received (at least $0.001 in securities priced at or above $1.00) is not an "infinitesimally small increment" for which the Commission raised concerns in the NMS Adopting Release. Accordingly, there would be no potential for Retail Orders or RPI Interest to jeopardize the incentives to enter displayed limit orders, or to otherwise implicate the customer protection, capacity, best execution, liquidity, and fragmentation concerns addressed by the Sub-Penny Rule. In addition, the RPI Program would actually serve to encourage the additional display of liquidity in the marketplace and would not detract from the quality of orders in the marketplace as raised in Regulation NMS. The

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24 See Securities Exchange Act Release No. 34-51808, 70 FR 37496(June 29, 2005) ("NMS Adopting Release"), at 37551-52.

25 17 CFR 242.612(c).

26 NMS Adopting Release at 37556.

Commission noted as such in the BYX Pilot Approval Order, stating "enabling the [E]xchanges to compete for this retail order flow through the Program 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."[27] The Exchange believes that its proposed RPI Program would similarly enable the Exchange to compete for retail order flow, would not materially detract from current incentives to display limit orders, and has the potential to result in greater order interaction and price improvement for Retail Orders.

Similarly, while the Exchange would "accept" and "rank" non-displayed RPI Interest using increments less than the minimum pricing increment as described above, doing so would in no way undermine the purpose or framework of the Sub-Penny Rule. Indeed, the prohibition on the acceptance and ranking based on sub-pennies was directed at the practice of private sub-penny display that had developed on ECNs in the wake of decimalization.[28] Some ECNs during that period were accepting, ranking and privately displaying sub-penny orders to subscribers while at the same time (then pre-exchange) Nasdaq and the exchanges were requiring their members to quote in pennies and the public quote stream reflected those quotes only in pennies. The Commission expressed concern that this lack of uniformity was "creating hidden markets whereby sophisticated traders [could] view and access better prices than those available to the general public."[29] The Sub-Penny Rule's prohibition on accepting and ranking sub-penny orders is therefore best understood as an effort to address and prevent the development of private or hidden markets with better-priced sub-penny orders. Because RPI Interest remains entirely non-displayed, RPI Interest presents no risk that a hidden sub-penny market would develop. Rather, the whole point of the RPI Program is to make better prices available to RMOs (and the retail investors they serve) by fostering competition on public markets for retail orders.

Exemptive Relief Would Serve to Protect Investors and Otherwise Serve the Public Interest Because It Would Enhance Price Competition for Retail Orders And Would Offer A More Robust Regulatory and Surveillance Environment for the Execution of Retail Order Flow.

The Exchange believes that exemptive relief permitting the RPI Program to accept and rank RPI Interest and disseminate RPI Interest through its Retail Liquidity Identifier in increments smaller than the permissible minimum pricing increment is appropriate in the public interest, protection of investors, and removal of impediments to and the perfection of the mechanism a

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27 BYX Pilot Approval Order, at 71658.

28 Securities Exchange Act Release No. 34-49325, 69 FR 11126 (Mar. 9, 2004) ("NMS Proposing Release"). The Commission noted the "growing trend in the industry, particularly among ECNs, to display quotations in their proprietary systems in sub-pennies . . . " See NMS Proposing Release at 11163.

29 NMS Proposing Release at 11171.

national market system.[30] While the Exchange remains committed to offering innovative on-exchange solutions to the retail investor community, the fact remains that a significant percentage of retail marketable flow is executed off-exchange. The Exchange believes that individual investors would benefit from trading on well-regulated, transparent, national securities exchanges, where their orders can be exposed to a diverse set of market participants, resulting in enhanced execution quality and price discovery, and increased opportunities for price improvement.

The Exchange notes that when its affiliate exchange, BYX, received its limited exemption from Rule 612 as part of theBYX Pilot Approval Order, the Commission opined that the exemption "should promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule…Market participants that display limit orders currently are not able to interact with marketable retail order flow because it is almost entirely routed to internalizing OTC market makers that offer sub-penny executions."[31] The principles identified by the Commission in granting the limited exemption within Pilot Approval Order have not changed, and the Exchange believes that the proposed addition of the RPI Program on EDGX has the potential to provide additional trading opportunities for retail investors while maintaining the same pricing increments found in the RPI Program offered by the Exchange's affiliate and other retail liquidity programs offered by competitor exchanges.[32] The potential for enhanced price competition would be created by the following incentives: (1) retail liquidity providers ("RLPs") will be incentivized to submit RPI Interest to the Exchange as there will be additional opportunities to execute against retail order flow and minimize adverse selection costs;[33] and (2) RMOs will be encouraged to route Retail Orders to the Exchange as the increased number of RLPs submitting RPI Interest to the Exchange would result in greater price improvement opportunities for the retail customers of RMOs.

In seeking feedback from Members and current RMOs, the Exchange learned that these market participants would be incentivized to send more Retail Orders to the Exchange if an RPI

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30 The Exchange notes that its affiliate exchange, BYX, previously sought, and received, a limited exemption from Rule 612 from the Commission in connection with its pilot program proposal, its proposal to make the RPI Program permanent, and its proposal to introduce an Enhanced RPI Order. In each proposal the Exchange sought exemptive relief permitting BYX to accept and rank RPI Orders based on an increment smaller than the minimum pricing increment. Supra note 3.

31 BYX Pilot Approval Order at 71658.

32 See, e.g., IEX Rule 11.232; Nasdaq BX Rule 4780; NYSE National Rule 7.44-E; NYSE Rule 7.44.

33 Adverse selection is the phenomenon where the price of a stock drops right after a liquidity provider purchases the stock. Marketable retail order flow is generally seen as more desirable by institutional liquidity providers as executions against retail orders are less prone to adverse selection. The Commission has previously opined that retail liquidity programs may be beneficial to institutional investors as they may be able to reduce their possible adverse selection costs by interacting with retail order flow. See BYX Pilot Approval Order at 71656.

Program was created. Accordingly, the Exchange seeks to introduce an RPI Program on EDGX. By attracting additional Retail Orders, the Exchange believes that the increased opportunities to interact with retail flow will incentivize RLPs to submit RPI Orders, thereby deepening the Exchange's liquidity pool and increasing order by order competition to execute versus retail flow, resulting in more price improvement opportunities for retail investors.

The Exchange recognizes that the RPI Program offered by its affiliate exchange, BYX, has resulted in positive trading experiences for retail investors. At the same time, a significant amount of retail order flow continues to migrate from registered exchanges to non-transparent, off-exchange venues. The Exchange believes its proposed introduction of an RPI Program on EDGX will encourage RMOs to submit retail order flow to execute on-exchange as RLPs will be incentivized to submit RPI Orders in order to improve the quality of order flow available for contra-side Retail Orders and increasing the odds of their RPI Orders executing with desirable retail order flow rather than against informed order flow or not executing at all. While the Program is premised upon the reliable identification and segmentation of retail flow, the Program is designed, however, to simultaneously produce aggressive price competition and as much order interaction for Retail Orders as possible. The Exchange believes that its proposed RPI Program has the ability to lead to an increased amount of Retail Orders submitted to the Exchange in search of price improvement offered by RPI Orders, thus allowing retail investors to benefit from the order competition and transparency offered by the Exchange.

The Exchange also notes that every aspect of the proposed RPI Program will be fully transparent and will be reflected in the Exchange's rulebook, will be shared publicly through the SEC rule filing process, and is subject to comment by any market participant or member of the public who cares to comment. Indeed, the proposed RPI Program will be implemented only if approved by the Commission. Additionally, the trading activity conducted through the RPI Program is subject to extensive market surveillance pursuant to the Exchange's obligation as a self-regulatory organization. As such, the anticipated additional retail order flow attracted to the RPI Program will result in individual investors' order flow being executed on a transparent, well-regulated, national securities exchange, that disseminates in real-time via the Retail Liquidity Identifier the symbol and side in which RPI Interest with a ranked price available to trade at prices at least $0.001 better than the Protected NBB or Protected NBO in securities priced at or above $1.00 is available to trade with individual investor orders. This is in stark contrast to off-exchange venues, such as wholesaler broker-dealers, that trade bilaterally as principal with individual investor orders based not on the displayed price the wholesaler is willing to trade, but a formula that depends on past execution quality of the wholesaler, its relationship with the broker-dealer, and other factors.

* * * *

The Exchange believes that its proposed RPI Program and granting of the requested exemptive relief are an important step in the direction of enhancing on-exchange price competition for retail flow, increased opportunities for market participants to interact with retail order flow that is otherwise internalized off-exchange, and the provision of more reliable retail liquidity. Taken together, these benefits are necessary or appropriate in the public interest, and consistent with the protection of investors, and removal of impediments to and the perfection of the mechanism a national market system, and merit exemptive relief from the requirements of Rule 612. Accordingly, the Commission should grant the Exchange the requested exemptive relief. If you have any questions, please contact me at (913) 222-4652, or csmith@cboe.com.

Very truly yours,

Courtney Smith

Courtney Smith
Senior Counsel
Cboe Global Markets – North American Equities

cc: Jamie Selway (SEC)
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