



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
TRADING AND MARKETS

January 16, 2026

Ms. Courtney Smith  
Senior Counsel  
North American Equities  
Cboe Global Markets  
433 W Van Buren St.  
Chicago, IL 60607

Re: Request for No-Action Relief From Rule 602 of Regulation NMS Submitted in Connection with Proposal to Modify the Retail Price Improvement Program (SR-CboeBYX-2025-007)

Dear Ms. Smith,

On November 27, 2012, the staff of the Division of Trading and Markets (“Division staff”) issued a no-action letter to Cboe BYX Exchange, Inc. (the “Exchange”) concerning Rule 602 of Regulation NMS (the “Quote Rule”) with respect to certain activity contemplated by the Exchange’s Retail Liquidity Improvement Program (the “Program”).<sup>1</sup> Based on the terms of the Program and the facts and representations contained in the request letter, the Division staff stated it would not recommend enforcement action to the Securities and Exchange Commission (“Commission”), either against the Exchange or against liquidity providers under the Quote Rule, relating to the kind of information disseminated through the Retail Liquidity Identifier (“RLI”).

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<sup>1</sup> See letter dated November 27, 2012 from David S. Shillman, Associate Director, Division of Market Regulation, to Eric J. Swanson, Senior Vice President and General Counsel, BATS Y-Exchange, Inc. (“Request for No-Action Relief From Rule 602 of Regulation NMS Submitted In Connection With Proposal To Establish A Retail Liquidity Improvement Program (SR-BYX-2012-019)”) (“BYX 2012 No-Action Letter”); see also Securities Exchange Act Release No. 81952 (Oct. 26, 2017), 82 FR 51309 (Nov. 3, 2017) (reflecting a name change to Cboe BYX Exchange, Inc.).

In light of changes to the Exchange's Program to (1) introduce an Enhanced Retail Price Improvement Order and (2) expand the scope to securities priced below \$1.00, you seek additional assurances that Division staff will not recommend an enforcement action against (1) the Exchange for failing to collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated by members of the Exchange pursuant to Rule 602(a) of Regulation NMS,<sup>2</sup> or (2) liquidity providers pursuant to Rule 602(b)(1) of Regulation NMS<sup>3</sup> in connection with the dissemination of the RLI.

As you described in your letter and the proposed rule change,<sup>4</sup> the Program's current Retail Price Improvement Orders and the proposed Enhanced Retail Price Improvement Orders (together, "RPI Interest") remain non-displayed at all times. 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 RLI will be disseminated through proprietary data feeds and consolidated data streams (i.e., pursuant to the Consolidated Quotation Plan or Nasdaq UTP Plan), as appropriate, only when there is RPI Interest with a ranked price available to trade at prices at least \$0.001 better than the Protected NBB or Protected NBO<sup>5</sup> in securities priced at or above \$1.00 and when there is RPI Interest with a ranked price available to trade at prices at least \$0.0001 better than the Protected NBB or Protected NBO in securities priced below \$1.00. You state the only contemplated change to what is disseminated via the RLI is that the RLI, as a result of the proposed rule change, will disseminate the existence of RPI Interest for securities priced below \$1.00, whereas today, RLI is only disseminating when RPI Interest for securities priced \$1.00 or greater exists. For all securities, the RLI will continue to be disseminated only when RPI Interest priced better than the Protected NBB or Protected NBO exists and will not be disseminated 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.

The Quote Rule requires national securities exchanges to, among other things, make available to vendors the best bid, the best offer, and aggregate quotation sizes for

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<sup>2</sup> 17 CFR 242.602(a).

<sup>3</sup> 17 CFR 242.602(b)(1).

<sup>4</sup> See letter dated September 30, 2025 from Courtney Smith, Senior Counsel, North American Equities, Cboe Global Markets to Jamie Selway, Director, Division of Trading and Markets, Commission ("Request for No-Action Relief From Rule 602 of Regulation NMS Submitted in Connection With Proposal to Modify the Retail Price Improvement Program (SR-CboeBYX-2025-007)"). A copy of the letter is attached. See also Amendment No. 4 to SR-CboeBYX-2025-007 (filed Sept. 29, 2025), available on the Commission's website at <https://www.sec.gov/comments/sr-cboebyx-2025-007/srcboebyx2025007-665327-1988394.pdf> ("Proposal"). The Proposal was deemed approved on November 15, 2025. See Securities Exchange Act Release No. 104210 (Nov. 18, 2025), 90 FR 52727 (Nov. 21, 2025).

<sup>5</sup> The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO") will be the same. See BYX Rule 1.5(s) and Proposal at 6.

each subject security listed or admitted to unlisted trading privileges which is communicated on any national securities exchange by any responsible broker or dealer.<sup>6</sup> The Quote Rule also requires each responsible broker or dealer to promptly communicate to its national securities exchange or national securities association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.<sup>7</sup> A “bid” or “offer” is defined as the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.<sup>8</sup> You state RPI Interest, considered either on their own or together with the RLI that indicates their existence, do not meet the definition of “bid” or “offer” in Rule 600(b)(16) because they do not communicate a specific price.

Based on the terms of the Program, as revised and the facts and representations contained in your letter, Division staff will not recommend enforcement action to the Commission, either against the Exchange or against liquidity providers, under the Quote Rule related to the kind of information disseminated through the RLI as revised pursuant to the Proposal.

You should understand that this is a Division staff position with respect to enforcement only and is provided solely to respond to your request. This letter does not purport to state or imply any legal conclusions, including any conclusion as to whether your receipt of this letter was necessary or appropriate in order to operate the Program, as revised. If you have any questions regarding this letter, please email [tradingandmarkets@sec.gov](mailto:tradingandmarkets@sec.gov) or call 202-551-5777.

Sincerely,



Eric Juzenas  
Associate Director  
Division of Trading and Markets

Attachment

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<sup>6</sup> 17 CFR 242.602(a)(1).

<sup>7</sup> 17 CFR 242.602(b)(1).

<sup>8</sup> 17 CFR 242.600(b)(16).

September 30, 2025

Submitted electronically

Mr. Jamie Selway  
Director  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

Re: Request for No-Action Relief From Rule 602 of Regulation NMS Submitted in Connection With Proposal to Modify the Retail Price Improvement Program (SR-CboeBYX-2025-007)

Dear Mr. Selway:

For the reasons set forth below, Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”), respectfully requests assurances from the staff of the Division of Trading and Markets (the “Staff”) of the Securities and Exchange Commission (the “Commission”) that the Staff will not recommend enforcement action pursuant to Regulation NMS Rule 602 (the “Quote Rule”) with respect to the Exchange’s planned dissemination of a Retail Liquidity Identifier containing certain information regarding Retail Price Improvement Orders (“RPI Orders”) and the proposed Enhanced Retail Price Improvement Orders (“Enhanced RPI Orders” and, together with RPI Orders, “RPI Interest”) pursuant to the BYX Retail Price Improvement RPI Program (“RPI Program”).

The Exchange previously sought, and received, an assurance from the Staff that it would not recommend enforcement action pursuant to Rule 602 of Regulation NMS in connection with both its pilot program proposal as well as its proposal to make the RPI Program permanent.<sup>1</sup> Recently, the Exchange filed a proposed rule change to enhance its RPI Program by introducing an Enhanced RPI Order type, as well as expanding the RPI Program to include securities priced below \$1.00. Because the No-Action Relief previously granted to the Exchange and its RPI Program was based on the terms of the Program and facts and representations contained in our

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<sup>1</sup> See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012), SR-BYX-2012-019 (“Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 2, to Adopt a Retail Price Improvement RPI Program”) (hereinafter, “Pilot Approval Order”); See also 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”) (hereinafter, “Permanent Approval Order”).

initial request letter,<sup>2</sup> the Exchange again seeks additional assurances from the Staff that it will not recommend an enforcement action against: (1) the Exchange for failing to collect, process, and make available to vendors the best bid, best offer, and quotation sizes communicated by Members of the Exchange pursuant to Regulation NMS Rule 602(a), or (2) liquidity providers pursuant to Regulation NMS Rule 602(b)(1).

### **Background**

On March 13, 2025, the Exchange filed a proposal to amend its RPI Program.<sup>3</sup> On March 14, 2025, the Enhanced RPI Proposal was noticed by the Commission and on March 20, 2025, the Enhanced RPI Proposal was published in the Federal Register. Subsequently, on March 31, 2025, the Exchange also filed a request for exemptive relief from Regulation NMS Rule 612 (the “Sub-Penny Rule”)<sup>4</sup> describing how the proposed enhancements to the RPI Program are consistent with the policy objectives of the Sub-Penny Rule, and are in furtherance of the public interest and protection of investors.<sup>5</sup> This letter discusses the RPI Program’s proposed Retail Liquidity Identifier (“RLI”) and requests assurances from the Staff that it will not recommend an

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<sup>2</sup> See Letter from David S. Shillman, Associate Director of the Division of Trading and Markets, Commission, to Eric J. Swanson, Senior Vice President and General Counsel, BATS Global Markets, Inc. (November 27, 2012) (“BYX No Action Letter”). “Based on the terms of the RPI Program and the facts and representations contained in your letter, the staff will not recommend enforcement action to the Commission, either against the Exchange or against liquidity providers, under the Quote Rule relating to the kind of information disseminated through the Retail Liquidity Identifier.”

<sup>3</sup> See Securities Exchange Act Release No. 102681 (March 14, 2025), 90 FR 13240 (March 20, 2025), SR-CboeBYX-2025-007 (“Enhanced RPI Proposal”).

<sup>4</sup> 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 “Final Rule”), 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”). As such, the Exchange’s request is based on the text of Rule 612 prior to the issuance of the Final Rule.

<sup>5</sup> See Letter from Courtney Smith, Senior Counsel, Cboe Global Markets, Inc., to Vanessa Countryman, Secretary, Commission (March 31, 2025) (“Rule 612 Request”).

enforcement action in connection with the dissemination of bids and offers, and aggregate quotation sizes, via the RLI. On May 6, 2025, the Exchange filed an amendment to its Enhanced RPI Proposal.<sup>6</sup> On June 17, 2025, the Exchange submitted a second amendment to the Enhanced RPI Proposal.<sup>7</sup> On June 18, 2025, the Exchange withdrew its first and second amendments to the Enhanced RPI Proposal and filed a third amendment.<sup>8</sup> On September 29, 2025, the Exchange submitted a fourth amendment to the Enhanced RPI Proposal.<sup>9</sup> On September 30, 2025, the Exchange filed a Revised Rule 612 Request.<sup>10</sup>

The RPI Program continues to be designed to attract retail order flow to the Exchange and allow such order flow to receive price improvement over the Protected NBBO, just as it was originally approved. Indeed, the proposed Amendment seeks only to augment the existing RPI Program through the introduction of an Enhanced RPI Order, and the expansion of the RPI Program to securities priced below \$1.00. As described further below, the proposed Enhanced RPI Order seeks to permit retail liquidity providers to post orders at their limit price but have the opportunity to gain order book priority in exchange for providing price improvement.<sup>11</sup> 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 or RPI Interest priced at least \$0.0001 better than the Protected NBB or Protected NBO for a particular security priced below \$1.00, the Exchange will disseminate its RLI to indicate that such interest is available on the Exchange.<sup>12</sup> Retail Member Organizations (“RMOs”)<sup>13</sup> will be able to submit a Retail Order<sup>14</sup> 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 BYX Book,<sup>15</sup> depending on the Retail Order’s instructions.

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<sup>6</sup> See Letter from Matthew Iwamaye, VP, Associate General Counsel, Cboe Global Markets, Inc. (May 6, 2025) (“Enhanced RPI Proposal Amendment”).

<sup>7</sup> See Letter from Matthew Iwamaye, VP, Associate General Counsel, Cboe Global Markets, Inc. (June 17, 2025) (“Enhanced RPI Proposal Amendment No. 2”).

<sup>8</sup> See Letter from Matthew Iwamaye, VP, Associate General Counsel, Cboe Global Markets, Inc. (June 18, 2025) (“Enhanced RPI Proposal Amendment No. 3”).

<sup>9</sup> See Letter from Matthew Iwamaye, VP, Associate General Counsel, Cboe Global Markets, Inc. (September 29, 2025) (“Enhanced RPI Proposal Amendment No. 4”).

<sup>10</sup> See Letter from Courtney Smith, Senior Counsel, Cboe Global Markets, Inc., to Vanessa Countryman, Secretary, Commission (September 30, 2025) (“Revised Rule 612 Request”).

<sup>11</sup> See proposed Rule 11.24(a)(4) (“Enhanced Retail Price Improvement Order”).

<sup>12</sup> See proposed Rule 11.24(e) (“Retail Liquidity Identifier”).

<sup>13</sup> See Rule 11.24(a)(1) (“Retail Member Organization”).

<sup>14</sup> See proposed Rule 11.24(f) (“Retail Order Designation”).

<sup>15</sup> See Rule 1.5(e). The term “BYX Book” shall mean the System’s electronic file of orders.

Below is a description of key aspects of the RPI Program, including the proposed changes as described in the Revised RPI Program Amendment.

- **Participants and Order Instructions** – as described in Rule 11.24 and in the Revised RPI Program Amendment, the RPI Program provides for a class of market participants known as RMOs and three order types, including the proposed Enhanced RPI Order.
  - *Retail Member Organization.* An RMO is a Member that has been approved by the Exchange under Rule 11.24 to submit Retail Orders pursuant to the RPI Program. 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 11.24(c).
  - *Retail Order.* A Retail Order is an agency order or riskless principal 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 trading algorithm or any other computerized methodology. A Retail Order is an Immediate or Cancel ("IOC") Order and shall operate, in accordance with the RMO's instructions, with (1) RPI Interest and (2) other interest on the BYX Book.
  - *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 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). An RPI Order for securities 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 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 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 a positive offset (for buy orders) or a negative offset (for sell orders). An RPI Order that is also a Primary Pegged Order (“RPI Primary Pegged Order”) must be entered with a positive (for buy order) 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 11.9(c)(8) and Rule 11.9(c)(8)(A). An RPI Primary Pegged Order priced at or above \$1.00 may have its Offset Amount entered in pricing increments of \$0.001. An RPI Primary Pegged Order priced below \$1.00 may have its Offset Amount entered in pricing increments of \$0.0001. 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). An RPI Order may also be entered in a sub-penny increment with an explicit 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 shall have priority as described in Rule 11.24(g).

- *Enhanced Retail Price Improvement (“Enhanced RPI”) Order.* As noted, the Exchange has submitted a proposal that seeks to introduce an Enhanced RPI Order and other associated clarifying changes. The Enhanced RPI Order is an RPI Order that is designated with a Step-Up Range instruction, which 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 price (for buy orders) or minimum execution price (for sell orders) at which a User is willing to execute against contra-side Retail Orders. Enhanced RPI Orders are eligible to trade only with incoming Retail Orders submitted by an RMO. 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.

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. An Enhanced RPI Order that is a limit order is ranked at its limit price and not the price inclusive of its Step-Up Range instruction.

An Enhanced RPI Order that is also a Primary Pegged Order (“Enhanced RPI Primary Pegged Order”) must be entered with an Offset Amount and will have its ranked price determined after the application of the Offset Amount, as described in Rule 11.9(c)(8) and Rule 11.9(c)(8)(A). The Step-Up Range instruction of an Enhanced RPI Primary Pegged Order will be applied to the resulting ranked price following the application of the Offset Amount and may cause the Enhanced RPI Primary Pegged Order to execute at a price that is higher (for buy orders) or lower (for sell orders) than its limit price. An Enhanced RPI Primary Pegged Order priced at or above \$1.00 may have its Offset Amount entered in pricing increments of \$0.001. An Enhanced RPI Primary Pegged Order priced below \$1.00 may have its Offset Amount entered in pricing increments of \$0.0001.

The System will monitor whether an Enhanced RPI Order, adjusted by any applicable Offset Amount, the order’s Step-Up Range instruction, and the order’s limit price, is eligible to interact with incoming Retail Orders. An Enhanced RPI Order (including any applicable Offset Amount, the Step-Up Range instruction, and the limit price) remains non-displayed in its entirety. Any User is permitted, but not required, to submit an Enhanced RPI Order. An Enhanced RPI Order may be an odd lot, round lot or mixed lot. An Enhanced RPI Order shall have priority as described in Rule 11.24(g). An Enhanced 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 Enhanced RPI Order may be entered with a limit price that is equal to or inferior to the Protected NBB or Protected NBO. An Enhanced RPI Order that is ineligible to execute because it is priced equal to or inferior to the Protected NBB (for buy orders) or Protected NBO (for sell orders) will not be canceled and will become eligible to execute against Retail Orders should the Enhanced RPI Order become executable at a later time.

- **Retail Order Designations** – pursuant to Rule 11.24(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) 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<sup>16</sup> 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 Interest or other price improving liquidity will be immediately and automatically cancelled.

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<sup>16</sup> See Rule 1.5(aa). The term “System” shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, executions and, when applicable, routing away.

- A Type 2 Retail Order to buy (sell) will interact first with available contra-side RPI Interest and other price improving liquidity and then any remaining portion of the Retail Order will be executed as an IOC Order pursuant to Rule 11.9(b)(1). Any remaining portion of a Type 2-designated Retail Order will be ineligible to execute with resting RPI Interest that is not priced better than the Protected NBB or Protected NBO. A Type 2-designated Retail Order can either be submitted as a BYX Only Order or as an order eligible for routing pursuant to Rule 11.13(a)(2).
- **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 and when RPI Interest priced at least \$0.0001 better than the Protected NBB or Protected NBO for a particular security is available in the System for securities priced below \$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 and Order Allocation** – as provided in proposed Rule 11.24(g), RPI Interest and other Non-Displayed Orders in the same security shall be ranked according to price then time of entry into the System, as provided for in Rule 11.12. Executions shall occur in price/time priority in accordance with Rule 11.12 and also as described in proposed Rule 11.24(g), as applicable. Any remaining unexecuted interest in RPI Orders will remain available to interact with other contra-side incoming Retail Orders. 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 the RPI Interest become priced better than the Protected NBB or Protected NBO at a later time.

Pursuant to proposed Rule 11.24(g)(1), the Step-Up Range instruction of an Enhanced RPI Order will be utilized to determine price priority when: (A) the Step-Up Range instruction is needed to gain priority over a resting same-side order with higher order book priority that is not an Enhanced RPI Order in the same security; (B) in situations where i) a contra-side Retail Order to sell (buy) is entered at a higher (lower) price than the ranked price (i.e., the limit price) of the Enhanced RPI Order and all other resting liquidity on the BYX Book and ii) the Enhanced RPI Order’s Step-Up Range instruction is priced equal to or higher

(lower) than the Retail Order's limit price; and (C) to determine price priority when multiple Enhanced RPI Orders are resting on the BYX Book and are eligible to trade ahead of higher priority orders resting on the BYX Book that are not Enhanced RPI Orders. However, in the event there are multiple Enhanced RPI Orders resting on the BYX Book, no other same side liquidity with higher priority, and an incoming contra-side Retail Order to sell (buy) is priced lower (higher) than the ranked prices of the resting Enhanced RPI Orders, execution priority will be determined by the higher ranked price and not the Step-Up Range instructions of the Enhanced RPI Orders. An Enhanced RPI Primary Pegged Order will have its priority determined by the ranked price that results after application of the Offset Amount as described in Rule 11.9(c)(8) and Rule 11.9(c)(8)(A) and will not include the Step-Up Range instruction. The Enhanced RPI Orders will execute pursuant to Rule 11.12 in standard price/time priority according to their limit prices or, in the case of Enhanced RPI Primary Pegged Orders, the resulting ranked prices after application of the applicable Offset Amount as described in Rule 11.9(c)(8) and Rule 11.9(c)(8)(A). The Step-Up Range instruction of an Enhanced RPI Order shall be ranked in accordance with Rule 11.12(a)(2)(F) and shall have priority over the discretionary offset of a Discretionary Order.<sup>17</sup>

If there are no resting Enhanced RPI Orders on the BYX Book that are able to provide a greater amount of price improvement than other same-side resting orders on the BYX Book with higher price/time priority in the same security, then an incoming Retail Order may execute against resting same-side orders on the BYX Book in price/time priority in accordance with Rule 11.12. Any remaining unexecuted portion of the Retail Order will cancel or execute in accordance with proposed Rule 11.24(f).

Pursuant to proposed Rule 11.24(g)(2), Enhanced RPI Orders priced at or above \$1.00 shall be granted price priority over resting same-side orders on the BYX Book with higher price/time priority in the same security if the Step-Up Range instruction of the Enhanced RPI Order is able to provide a greater amount of price improvement to an incoming contra-side Retail Order than would be provided by the resting same-side order on the BYX Book by stepping up to the next NBBO midpoint or next full cent, as described in proposed Rule 11.24(g)(2)(A) – (C). Enhanced RPI Orders in securities priced at or above \$1.00 may include a Step-Up Range instruction priced in \$0.001 increments, but these orders shall not gain priority over other same-side resting orders on the BYX Book if the Step-Up Range instruction is unable to step up to the NBBO midpoint or next full cent. Step-Up Range instructions priced in increments finer than \$0.01 will be capped at the maximum

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<sup>17</sup> The Exchange notes that it has also proposed to amend Rule 11.12 (Priority of Orders) in order to account for the Step-Up Range instruction of an Enhanced RPI Order and when the Step-Up Range instruction shall have priority over the discretionary range of a Discretionary Order.

executable price based on a valid tick increment or the midpoint and will not be executable at the maximum price of the Step-Up Range instruction.

Pursuant to proposed Rule 11.24(g)(3), Enhanced RPI Orders priced below \$1.00 shall be granted price priority over resting same-side orders on the BYX Book in the same security if the Step-Up Range instruction of the Enhanced RPI Order is able to provide a greater amount of price improvement to an incoming contra-side Retail Order by stepping up to the next minimum price increment. The System will not support fractional penny quotations or executions priced in \$0.00001 increments and finer in securities priced below \$1.00. Quotations and executions priced in increments up to \$0.0001 are supported by the System.

### **Applicable Law**

The Quote Rule requires national securities exchanges and national securities associations to, among other things, collect, process, and make available to vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges that is communicated on any national securities exchange by a responsible broker or dealer.<sup>18</sup> Rule 600(b)(11)<sup>19</sup> of Regulation NMS defines a “bid” or “offer” as the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest.

In summarizing the Quote Rule as originally adopted in 1978, the Commission stated simply that it required exchanges and other specialized market centers “to make available quotations (including size) in all reported securities in which that market center is making a market” and made clear that “quotations made available pursuant to the Rule [were] required to be ‘firm,’ subject to certain exceptions.”<sup>20</sup> The Quote Rule’s adoption followed “largely unsuccessful” private efforts to develop a composite quotation system and the continued dissemination by exchanges of “bid and asked price data which [did] not represent ‘firm’ quotations....”<sup>21</sup> More fundamentally, the Rule sought to meet the need identified by the 1975 Amendments “for a prompt, accurate and reliable central quotation reporting system.”<sup>22</sup>

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<sup>18</sup> 17 CFR 242.602(a)(1).

<sup>19</sup> 17 CFR 242.600(a)(11).

<sup>20</sup> See Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) at \*1.

<sup>21</sup> Id. at \*2.

<sup>22</sup> S. Rep. No. 75, 94<sup>th</sup> Cong., 1 Sess. 8-9 (1975).

In 1996, in conjunction with the Commission’s adoption of the Limit Order Display Rule, the Quote Rule underwent significant amendments designed “to ensure that more comprehensive quotation information is made available to the public[.]” in response to Commission concerns following an exhaustive investigation and investigative report concerning trading practices in the Nasdaq market about the development of private markets with better prices for professionals than those visible and accessible to the public.<sup>23</sup>

*Over the course of the last decade, certain trading systems that allow market makers and specialists to widely disseminate significant trading interest to certain market participants without making this trading interest available to the public market at large have become significant markets in their own right. Although offering benefits to some market participants, widespread participation in these hidden markets has reduced the completeness and value of publicly available quotations contrary to the purposes of the NMS.<sup>24</sup>*

The 1996 amendments had the effect of requiring specialists and market makers to reflect in their public quotes any better-priced orders they broadly displayed by market makers through ECNs.<sup>25</sup>

### **Discussion of the Quote Rule and the RPI Program**

The Exchange appreciates the profoundly positive impact that the Quote Rule, as amended, has had on the National Market System, and understands the Commission’s caution with respect to the definitions that determine the scope of the Quote Rule. With the above background and this recognition in mind, we discuss below why the RPI Program, including the proposed modifications, is consistent with the Quote Rule.

The obligation of exchanges to disseminate quotations under Regulation NMS Rule 602(a), and those of responsible brokers and dealers to communicate prices and quotation sizes to exchanges under 602(b) depend on the definition of “bid” or “offer” under Rule 600(b)(2) which states in pertinent part:

*Bid or offer means the bid price of the offer price communicated by a member of a national securities exchange...to any broker or dealer, or to any customer, at which*

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<sup>23</sup> See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (“Order Execution Obligations Release”).

<sup>24</sup> *Id.* at 48290, 48307.

<sup>25</sup> *Id.* at 48291.

*it is willing to buy or sell one or more round lots of any NMS security, as either principal or agent, but shall not include indications of interest.*<sup>26</sup>

The Exchange believes that the non-displayed trading interest entered into the Exchange's System in the form of RPI Interest, considered either on their own or together with the RLI that indicates its existence, do not meet the definition of "bid" or "offer" in Rule 600(b)(8).

To meet the definition, a "bid" or "offer" must include a price. Here, the RPI Program's current RPI Orders, as well as the proposed Enhanced RPI Orders, remain non-displayed at all times. Moreover, the RLI that advertises these orders does *not* communicate a specific price to any broker-dealer or customer. Indeed, the only contemplated change to what is disseminated via the RLI is that the RLI will now also disseminate RPI Interest for securities priced below \$1.00, whereas today, RLI only disseminates RPI Interest for securities priced \$1.00 or greater. Specifically, the RLI will display when there is RPI Interest 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 and when there is RPI Interest available to trade at prices at least \$0.0001 better than the Protected NBB or Protected NBO in securities priced below \$1.00.

As demonstrated above, the proposed enhancements to the RPI Program will not detract from the RPI Program's contribution to the provision of better prices for retail investors, a core goal of the National Market System in general and the Quote Rule in particular. Indeed, the RPI Program would continue to enhance price competition for retail orders and increase the level of order interaction experienced by retail investors. Liquidity providers would continue to compete for execution priority with respect to incoming Retail Orders by being ranked first at the best price. Additionally, because liquidity providers would not be able to see competing orders, they would be incentivized to set new, more aggressive prices rather than simply matching existing prices.

Overall, the Exchange believes that providing transparency to market participants regarding the presence of RPI Interest through the RLI continues to provide the following benefits: (1) RMOs will be encouraged to route additional Retail Orders to the Exchange as there will be increased opportunities for price improvement; and (2) retail liquidity providers ("RLPs") will be incentivized to submit additional RPI Interest to the Exchange as there will be additional opportunities to execute against retail order flow and minimize adverse selection costs.<sup>27</sup>

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<sup>26</sup> 17 CFR 242.600(b)(8).

<sup>27</sup> 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 Pilot Approval Order at 71656.

Moreover, while Rule 602 was adopted to facilitate the establishment of a comprehensive composite quotation system across market centers as an integral component of a national market system, the dissemination of quotations in RPI Interest does not detract from this purpose. As noted directly above, the increase in RMO activity is likely to attract additional retail liquidity provision, as market participants generally prefer to execute versus retail order flow. As such, the symbol and side of available RPI Interest disseminated by the RLI are representative of interest that would not otherwise be entered by market participants interacting with non-retail order flow. The Commission has similarly indicated that RPI Interest can benefit RMOs, but is generally not useful for other purposes, such as establishing a Protected NBB or Protected NBO due to the limited nature of its use:

*Quotations that Rule 602 requires to be included in an exchange's best bid and offer are used to establish the Protected NBB or Protected NBO for an NMS stock and are eligible for protection against trade-throughs pursuant to Rule 611 of Regulation NMS. Naturally, in order to be protected such quotations must be accessible to all market participants on terms that are not unfair or unreasonably discriminatory. In contrast, access to RPI Order interest is limited to Retail Orders because many market participants may be willing to offer liquidity to retail investors at better prices than they would be willing to offer all market participants. RPI Order interest thereby can benefit retail investors by giving them an opportunity to receive better prices on exchanges, but it is unsuitable for other purposes, including establishing a national best bid and offer and eligibility for Rule 611 protection.<sup>28</sup>*

Additionally, the Exchange believes that the proposed amendments to the RPI Program will provide RMOs with beneficial information that they may utilize to make the best routing and execution decisions for their Retail Orders. In doing so, RMOs may seek to execute their Retail Orders on BYX, providing them with a viable alternative to off-exchange venues and other exchanges. Enhanced competition may drive other exchanges to enhance their retail offerings by offering more competitive price improvement opportunities, thereby driving more retail order flow onto exchanges, deepening liquidity pools, enhancing price discovery, and providing increased opportunities for price improvement, thereby benefitting retail investors. Additionally, such increased competition may incentivize off-exchange venues such as wholesale broker-dealers to route orders sent to them to BYX, as enhanced price improvement opportunities created by increased on-exchange competition for retail order flow is made more observable by the proposed changes to the RPI Program. In addition, the Program as proposed has the potential to produce

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<sup>28</sup> See Securities Exchange Act Release No. 98206 (August 23, 2023), 88 FR 59551 (August 29, 2023) (“Order Granting Application of NYSE National, Inc. for a Limited Exemption from Rule 602 of Regulation NMS for Its Retail Liquidity RPI Program”), at 59551.

better prices for retail investors, a core goal of the National Market System in general and the Quote Rule in particular. As set forth in the Exchange's Sub-Penny Exemptive Relief Request, the Program would enhance price competition for retail orders and increase the level of order interaction experienced by retail investors.<sup>29</sup> In addition to the meaningful price improvement afforded to retail investors, retail liquidity providers stand to benefit from submitting Enhanced RPI Orders and Step-Up Range instructions with competitive prices. By providing Enhanced RPI Orders and Step-Up Range instructions with competitive prices, retail liquidity providers are, in essence, improving the quality of order flow available for contra-side Retail Orders and increasing the odds of their RPI Interest executing with desirable retail order flow rather than against informed order flow or not executing at all.

The Exchange also notes that every aspect of the current RPI Program is fully transparent and is reflected in the Exchange's rulebook and has already been the subject of market participants' feedback, and the SEC approval process. Similarly, the proposed changes to the RPI Program have been shared publicly through the SEC rule filing process and are subject to comment by any market participant or member of the public who cares to comment. Indeed, the proposed changes to the 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 RLI the symbol and side in which RPI Interest 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.<sup>30</sup>

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For the reasons set forth above, the Exchange requests assurance that the Staff will not recommend enforcement action pursuant to Regulation NMS Rule 602 with respect to the RPI Program's dissemination of a RLI or with respect to RPI Interest advertised by the RLI. In particular, the Exchange asks for assurance from the Staff that it will not recommend such action with respect to: (1) the Exchange with respect to collecting, processing, and making available to

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<sup>29</sup> The Sub-Penny Exemptive Relief Request also argues in favor of relief from the Sub-Penny Rule because the Exchange offers a robust regulatory and surveillance alternative to existing oversight of internalization. This ground, while not discussed herein, also favors relief from the Quote Rule. We ask that pages 10 – 13 of the Sub-Penny Exemptive Relief Request be incorporated by reference into this request for relief.

<sup>30</sup> See Securities Exchange Act Release No. 96495 (December 14, 2022), 88 FR 128 (January 3, 2023) ("Order Competition Proposal") at 130.

vendors the best bid, best offer, and quotation sizes communicated by Members of the Exchange, or (2) liquidity providers entering RPI Interest under the RPI Program. The Exchange reiterates that it has received similar assurances from the Staff for the current RPI Program, the nature of which is not changing. The proposed modifications to the RPI Program seek only to provide RMOs and the retail investors they serve to receive additional execution opportunities and price improvement, both of which further the purpose of Regulation NMS and Rule 602 in particular. If you have any questions, please contact me at (913) 222-4652, or [csmith@cboe.com](mailto:csmith@cboe.com).

Very truly yours,

*Courtney Smith*

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