

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86204; File No. SR-BYX-2012-019)

June 26, 2019

Self-Regulatory Organization; Cboe BYX Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection with the Exchange's Retail Price Improvement Program

On November 27, 2012, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")¹ that granted the BATS BYX-Exchange, Inc. (k/n/a "Cboe BYX" or the "Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement ("RPI") Program (the "Program"). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.² The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended seven times;³ both the pilot Program and exemption are scheduled to expire on December 31, 2018.

¹ 17 CFR 242.612(c).

² See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BXY-2012-019).

³ See Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2014) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2014) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR-BYX-2015-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR-BYX-2016-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 76953 (January 21, 2016), 81 FR 4728 (January 27, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 78180

The Exchange now seeks to extend the exemption until September 30, 2019.⁴ The Exchange's request was made in conjunction with an immediately effective filing that extends the operation of the Program until September 30, 2019.⁵ In its request to extend the exemption, the Exchange notes that the Program was implemented gradually over time. Accordingly, the Exchange has asked for additional time to allow itself and the Commission to analyze data concerning the Program, which the Exchange committed to provide to the Commission, as well as to allow additional opportunities for greater participation in the Program.⁶ For this reason and the reasons stated in the Order originally granting the limited exemption, the Commission finds

(June 28, 2016), 81 FR 43306 (July 1, 2016) (SR-BYX-2016-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 78178 (July 5, 2016), 81 FR 43689 (July 5, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 81368 (August 10, 2017), 82 FR 38960 (August 16, 2017) (SR-BatsBYX-2017-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 81364 (August 8, 2018), 82 FR 38733 (August 15, 2017) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 83758 (August 1, 2018), 83 FR 38757 (August 7, 2018) (SR-CboeBYX-2018-015) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 83756 (August 1, 2018), 83 FR 38748 (August 7, 2018) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 84830 (December 17, 2018) 83 FR 65769 (December 21, 2018) (SR-CboeBYX-2018-025) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 84845 (December 18, 2018), 83 FR 66329 (December 26, 2018) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program). The Exchange filed to make the pilot program permanent, but subsequently withdrew that filing. See Securities Exchange Act Release No. 83831 (August 13, 2018), 83 FR 41128 (August 17, 2018) (SR-CboeBYX-2018-014); 85586 (April 10, 2019), 84 FR 15657 (April 16, 2019) (SR-CBOE-2018-014).

⁴ See letter from Adrian Griffiths, Assistant General Counsel, Cboe BYX, to Vanessa Countryman, Secretary, Commission, dated June 25, 2019.

⁵ See SR-CboeBYX-2019-010.

⁶ See RPI Approval Order, supra note 2, at 77 FR at 71657.

that extending the exemption, pursuant to its authority under Rule 612(c) of Regulation NMS, is appropriate in the public interest and consistent with the protection of investors.

THEREFORE, IT IS HEREBY ORDERED, that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is granted a limited exemption from Rule 612(c) of Regulation NMS that allows it to accept and rank orders priced equal to or greater than \$1.00 per share in increments of \$0.001, in connection with the operation of its RPI Program.

The limited and temporary exemption extended by this Order is subject to modification or revocation if at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Securities Exchange Act of 1934. Responsibility for compliance with any applicable provisions of the federal securities laws must rest with the persons relying on the exemptions that are the subject of this Order.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Eduardo A. Aleman
Deputy Secretary

⁷ 17 CFR 200.30-3(a)(83).