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Ms. Vanessa Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Via Electronic Submission

Re: Staff Statement on Affiliations Between National Securities Exchanges and Broker-Dealers (File No. 4-936)

Dear Ms. Countryman:

Bloomberg L.P.[1] respectfully submits this letter to the Securities and Exchange Commission (the "Commission") in response to the request for public input in the *Staff Statement on Affiliations Between National Securities Exchanges and Broker-Dealers* issued by the Division of Trading and Markets (the "Staff Statement").[2] Our comments focus on the Staff Statement's observation that exchange affiliation with an introducing broker that accesses the exchange "raises questions about whether the introducing broker should be considered a facility of the exchange."[3]

Bloomberg, a provider of market data, order management, and other trading technology, has a longstanding interest in the scope of the "facility" definition. Like many market participants, we have commented extensively on the central role the "facility" definition has played in promoting market efficiency, competition, and investor protection. Recent examples of industry and Commission actions to ensure these protections remain vibrant include the Commission's treatment of wireless connectivity services offered by an affiliate of New York Stock Exchange LLC ("NYSE") as facilities of the exchange—a determination upheld by the D.C. Circuit[4]—and its rejection of Cboe Exchange, Inc.'s ("Cboe") proposal to exclude its affiliated order and

[1]Bloomberg—the global business, financial information, and news leader—increases access to market data by connecting market participants of all stripes to a dynamic network of information, people, and ideas. The company's strength—quickly and accurately delivering data, news, and analytics through innovative technology—is at the core of the Bloomberg Terminal. The Terminal provides financial market information, data, news, and analytics to banks, broker-dealers, institutional investors, governmental bodies, and other business and financial professionals worldwide.

[2]Division of Trading and Markets, *Staff Statement on Affiliations Between National Securities Exchanges and Broker-Dealers* (Sept. 30, 2026) ("Staff Statement"). The Staff Statement represents the views of the staff and has no legal force or effect. *Id.* at n.1.

[3]*Id.* (citing Securities Exchange Act Release No. 44983 (Oct. 25, 2001), 66 FR 55225, 55234 (Nov. 1, 2001) ("PCX Order")).

[4] *See Intercontinental Exchange, Inc. v. SEC*, 23 F.4th 1013 (D.C. Cir. 2022) ("*ICE*").

execution management systems ("OEMSs") from that definition.[5] Many of the concerns market participants raised in those proceedings apply with equal force to exchange-affiliated brokers.

In summary, the Commission's historical interpretation of the long-settled statutory language on facilities has been effective and durable since 1934—empowering the technological innovation that has moved from open-outcry trading of modest size to microsecond trading of enormous volume while still maintaining critical investor protections and transparency. The Commission should address exchange-affiliated brokers as it recently addressed Cboe's affiliated OEMS in the Cboe Exemption Order:[6] by reaffirming facility status, setting any conditions for relief itself, and retaining its oversight. Specifically:

1. Whether an affiliate is a facility is a question of law for the Commission. It should not be resolved by an exchange in its "sole discretion."[7]
2. Any relief from the obligations of facility status should be granted by Commission order, as in the Cboe Exemption Order, with conditions the Commission sets and can enforce.
3. The futures-market model of an exchange vertically integrated with an affiliated futures commission merchant ("FCM") may not be permitted under the Securities Exchange Act of 1934 (the "Exchange Act") and, in any event, should not be imported into the

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[5] *See, e.g.*, comment letters submitted in connection with the NYSE wireless-connectivity proposals by Healthy Markets Association, McKay Brothers LLC, Securities Industry and Financial Markets Association ("SIFMA"), Virtu Financial, Inc., FIA Principal Traders Group, IMC Financial Markets, XR Securities LLC, Citadel Securities LLC, and Bloomberg L.P. (File No. SR-NYSE-2020-05 and related filings), generally supporting the Commission's treatment of the wireless connectivity services as facilities of the exchanges and raising concerns regarding competitive advantages associated with the exchange affiliate's access to the Mahwah data center. *See also ICE*, 23 F.4th 1013; Brief of Amicus Curiae Bloomberg L.P. in Support of Respondent; Brief of Amici Curiae McKay Brothers LLC, Quincy Data LLC, Virtu Financial, Inc., and Jump Trading, LLC in Support of Respondent and Denial of the Petition for Review; Brief of SIFMA and FIA Principal Traders Group as Amici Curiae in Support of Respondent SEC. On Cboe's proposal, *see* Order Disapproving a Proposed Rule Change To Adopt a New Rule Regarding Order and Execution Management Systems, Securities Exchange Act Release No. 101491 (Oct. 31, 2024), 89 FR 88080 (Nov. 6, 2024) (SR-CBOE-2024-008) ("Rule 3.66 Disapproval Order"). *See also* Brief of Respondent Securities and Exchange Commission, Cboe Exchange, Inc. v. SEC, No. 24-3316 (7th Cir.) (defending the Commission's determination that Cboe's affiliated OEMS, Silexx, constituted a "facility" of the exchange); Amicus Brief of Securities Industry and Financial Markets Association in Support of Respondent for Affirmance, Cboe Exchange, Inc. v. SEC, No. 24-3316 (7th Cir. June 9, 2025) (arguing that an exchange-affiliated OEMS falls within the statutory definition of "facility" and that Commission oversight is necessary to preserve competitive fairness and even-handed treatment of market participants); Amicus Brief of Bloomberg L.P. in Support of Respondent, Cboe Exchange, Inc. v. SEC, No. 24-3316 (7th Cir. June 9, 2025).

[6] Order Granting Conditional Exemptive Relief Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 From Rule Filing Requirements Under Section 19(b) of the Exchange Act and Requirements Under Section 6(b) of the Exchange Act for Order and Execution Management Systems Offered by an Affiliate of the Cboe Exchange, Inc. or Pursuant to a Contract with the Exchange, Securities Exchange Act Release No. 105351 (May 1, 2026), 91 FR 24631 (May 6, 2026) ("Cboe Exemption Order").

[7] *See* Securities Exchange Act Release No. 106422 (Sept. 18, 2026) (SR-KALSHIEX-2026-02) ("Kalshi Filing"), at 47 n.62 (describing proposed Rule 14.38(f), which would permit the exchange to determine, "in its sole discretion," whether services or functions constitute a system of communication to or from the Exchange).

Exchange Act framework without careful consideration of the differences between the markets, and, at a minimum, should be confined to notice-registered security futures exchanges and futures-type products.

4. The Commission should preserve its ability to review meaningfully, and require changes to, the rules governing exchange affiliates. That ability is limited in the Section 19(b)(7) process and absent from the Commodity Futures Trading Commission ("CFTC") self-certification process.

I. THE FACILITY DEFINITION IS INTENTIONALLY BROAD, AND THAT BREADTH ALLOWS IT TO KEEP PACE WITH THE MARKETS

Section 3(a)(2) of the Exchange Act provides that the term "facility," when used with respect to an exchange, "includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange)..."[8] Each element is expansive: the definition "includes" the enumerated items, "among other things"; reaches "any system of communication"; and applies to communication "by ticker or otherwise." It is not tied to any particular technology or corporate form.

That breadth is deliberate, and the Commission has consistently defended it. When legislation was introduced to narrow the definition, then-Chairman Clayton explained that the definition is critically important because it sets the scope of the Commission's jurisdiction over exchanges.[9] Congress has repeatedly declined to narrow it.[10] The Commission has applied the definition to affiliates, stating in the Regulation ATS adopting release that an exchange affiliate could not "integrate, or otherwise link" a trading system with the exchange without being considered a facility.[11] And the D.C. Circuit, in holding that wireless connectivity services offered by an exchange affiliate were facilities, explained that "[t]he statutory definition of 'exchange' encompasses more than just the matching engine," and that a narrower reading would allow a

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[8] Exchange Act Section 3(a)(2).

[9] Letter from Jay Clayton, Chairman, U.S. Securities and Exchange Commission, to Rep. Barry Loudermilk (Dec. 7, 2017); *see* Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., to Vanessa Countryman, Secretary, Securities and Exchange Commission (Mar. 25, 2024) (File No. SR-CBOE-2024-008) ("Bloomberg Letter I") at 4.

[10] *See, e.g.*, Exchange Regulatory Improvement Act, H.R. 3555, 115th Cong. (2017); Bloomberg Letter I at 4 (noting that similar legislation introduced in 2022 and 2023 did not advance).

[11] Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844, 70891 (Dec. 22, 1998).

party to "elude SEC jurisdiction by making simple changes to its corporate structure, an obviously untenable result."[12]

This breadth is also what gives the definition its continuing utility. Without amendment, a definition written to reach the stock ticker has reached order routers, wireless networks, and OEMSs. It gives the Commission the tools to oversee exchange-controlled systems of access and communication, and the flexibility to address new technologies and business models, including the affiliated intermediaries described in the Staff Statement, as they emerge. Where the obligations of facility status warrant tailoring, Section 36 of the Exchange Act gives the Commission ample authority to do so; there is no need, and no statutory basis, to narrow the definition itself.

II. A ROBUST FACILITY DEFINITION IS ESSENTIAL TO FAIR COMPETITION

Exchanges are not ordinary market participants. A registered exchange is a self-regulatory organization with authority over its members, many of which compete with its affiliates, and it often controls the only venue for sole-source products. In return for assuming these regulatory responsibilities, exchanges receive substantial benefits and privileges, including protected-quote status, market-data and consolidated-tape revenues, the ability to operate primary-listing businesses and collect listing fees, exchange-rule limitations on liability, and absolute immunity from private damages suits when performing delegated regulatory functions. Where an exchange controls access to a market that no one else can offer, its affiliate may be advantaged in ways that competitors cannot easily detect or conceivably replicate.

In 2001, in connection with the creation of the Archipelago Exchange ("ArcaEx") as the equities trading facility of PCX Equities, Inc. ("PCXE"), a subsidiary of the Pacific Exchange, Inc. ("PCX"), the Commission considered the regulatory status of Wave Securities LLC, a broker-dealer affiliated with ArcaEx.[13] Wave performed two distinct functions: it routed orders from ArcaEx to other market centers and acted as an introducing broker providing customers with access to ArcaEx. The Commission concluded that Wave's outbound routing function was an exchange "facility" under Section 3(a)(2) because Wave was uniquely linked to and endorsed by ArcaEx for that function and operated as a system of communication to or from the exchange. By contrast, the Commission permitted Wave's introducing-broker function to remain outside the facility perimeter because Wave performed that function on the same terms as other members. Other members could provide comparable sponsored access, and information barriers separated the function from the exchange.

The PCX Order should not be read as establishing a categorical exemption from the facility definition for an exchange-affiliated introducing broker. Rather, the Commission reached

[12] *ICE. v. SEC*, F.4th at 1023–24.

[13] *See* PCX Order, 66 FR at 55233–35.

different conclusions regarding different functions performed by the same affiliated broker based on the particular facts and circumstances. The PCX Order therefore reflects a functional and fact-specific application of Section 3(a)(2), rather than a rule that introducing-broker activities conducted by an exchange affiliate necessarily fall outside the facility definition.[14]

Just as importantly, the Commission expressly recognized that its conclusion depended on those circumstances continuing to exist. The Commission stated that its analysis could change if Wave became the sole or predominant source of sponsored access, if its information barriers proved ineffective, or if the advantages arising from its affiliation with PCX otherwise became significant. That reservation illustrates why the Commission must retain responsibility not only for the initial facility determination but also for assessing whether the facts and circumstances continue to support it. An exchange should not be able to convert the PCX Order's fact-specific analysis into a self-executing exemption and then determine for itself whether its affiliated broker remains within the boundaries of that exemption.

Even where the Commission concludes that an affiliate's present activities do not constitute a facility, meaningful Commission oversight remains necessary to evaluate changes in market share, access alternatives, information barriers, fees, operational integration, or other circumstances that could cause the affiliate's activities to fall within the statutory definition or create the competitive advantages the PCX Order sought to prevent.

More recently, the Commission was called upon to consider a similar issue when Cboe proposed Rule 3.66, which would have permitted certain OEMSs owned by or affiliated with Cboe to operate outside the Exchange Act's "facility" framework so long as specified conditions intended to ensure their operational separation from the exchange were satisfied. The proposal arose in connection with Silexx, a Cboe-affiliated OEMS through which market participants could route orders to Cboe and other trading venues. Cboe argued that an affiliated OEMS should not be treated as an exchange facility if it operated as a separate business and on the same terms as unaffiliated OEMSs. The proceeding, however, illustrated the difficulty of maintaining that separation in practice. Among other things, the Commission found that Cboe provided port fee waivers to users of Silexx that were not available to users of competing OEMSs. In disapproving the proposal, the Commission also recognized that the potential competitive advantages created by affiliation can flow in both directions—from the exchange to its affiliate and from the affiliate to the exchange.

In both proceedings, the Commission applied the Exchange Act's broad facility definition to the particular facts and circumstances of the affiliate relationship, focusing on the degree of integration with the exchange and the specific competitive and conflict-of-interest risks that relationship created.

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[14] *Id.*

Facility status is the Exchange Act's mechanism for addressing these risks: the terms on which a service is offered must be filed as exchange rules, made public, and reviewed by the Commission for consistency with Sections 6(b)(4), (5), and (8). As the D.C. Circuit has explained, whether that process burdens an affiliate's ability to compete is a judgment Congress has already made.[15]

III. THE CBOE EXEMPTION ORDER PROVIDES THE RIGHT APPROACH

The Commission's treatment of Cboe's affiliated OEMS shows how these principles can flexibly accommodate a changing market. In 2024, the Commission disapproved Cboe's proposal to define its affiliated OEMSs out of the facility definition by exchange rule, concluding that Silexx "fits squarely within the definition of a facility."[16] In May 2026, acting on Cboe's request under Section 36, the Commission granted conditional relief from the Section 19(b) rule-filing requirements and related Section 6(b) requirements.[17] The order reflects a deliberate decision and does three things that should guide the Commission here.

First, it reaffirmed facility status. The order states that Silexx is a facility, and that affiliated OEMSs that are facilities remain subject to all other requirements applicable to exchange facilities, including the books-and-records and inspection requirements of Sections 17(a) and 17(b).[18] The relief addressed the procedural consequences of facility status, not the status itself.

Second, the Commission set the terms. The relief is available only if conditions specified by the Commission are met: use of the affiliated OEMS must be voluntary; connectivity, ports, fees, and exchange services must be provided on the same terms to users of affiliated and third-party OEMSs; orders must be processed identically; fees on each side may not take account of activity on the other; and the exchange must maintain controls against informational advantages.[19] The Commission found the relief appropriate because the conditions are reasonably designed to ensure operation consistent with the Exchange Act and because "the Commission will retain the ability to oversee the Exchange and Exchange Affiliated OEMS."[20]

Third, it provided flexibility. The order responded to Cboe's concern that rule filings hindered its affiliated OEMS's ability to adjust pricing,[21] while preserving the protections on which competitors and users rely—the kind of calibrated, Commission-directed flexibility the Exchange Act contemplates and the Commission has historically delivered.

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[15] *ICE*, 23 F.4th at 1026; *see* Rule 3.66 Disapproval Order, 89 FR at 88086 n.120.

[16] Rule 3.66 Disapproval Order, 89 FR at 88084.

[17] Cboe Exemption Order, 91 FR at 24631, 24633.

[18] *Id.* at 24631, 24632–33.

[19] *Id.* at 24631–32.

[20] *Id.* at 24632.

[21] *Id.* at 24631.

The Cboe Exemption Order does not, by its terms, extend to an affiliated broker. One of its conditions is that the affiliated OEMS, or the entity that owns it, not be a registered broker-dealer.[22] By contrast, each registrant described in the Staff Statement is affiliated with an FCM that will perform introducing-broker functions, extend margin to customers, and hold customer funds and property.[23] Those functions go well beyond software that a member may choose to install. Whether, and on what conditions, relief would be appropriate for such an affiliate is a question the Commission would need to decide on its own record.

IV. THE FACILITY DETERMINATION MUST BE MADE BY THE COMMISSION, NOT LEFT TO AN EXCHANGE'S SOLE DISCRETION

The recent KalshiEX LLC ("Kalshi") filing takes a different approach. The proposed rules would bar certain broker affiliates from providing order routing, co-location, market data, or "any other services or functions determined by the exchange, in its sole discretion, to constitute a system of communication from or to the Exchange."[24] Accordingly, the filing states that the exchange "shall not treat" the affiliated broker's operations as a facility.[25] The exchange would also retain authority to condition, suspend, or terminate the broker affiliate's privileges if the exchange determines that the information barriers have proven ineffective.[26] Under this structure, the exchange both makes the facility determination and polices the conditions on which that determination rests.

We respectfully submit that this approach is inconsistent with the Exchange Act. Whether an affiliate is a facility is a statutory question with jurisdictional consequences, and the Commission rejected Cboe's attempt to resolve it in its own rulebook.[27] The burden is on the exchange to demonstrate that its rules are consistent with the Exchange Act, and the Commission may not rely on an exchange's representations in place of its own findings.[28] The Commission also noted that Cboe had not explained how it would monitor compliance with conditions on an affiliate outside Commission oversight[29]—a concern that applies with greater force where the exchange would decide for itself whether its own safeguards are working.

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[22] *Id.* (Exemption Condition 3). Bloomberg noted the significance of this condition in the Rule 3.66 proceeding. *See* Bloomberg Letter I at 7–8.

[23] Staff Statement (describing the Forms 1-N of Coinbase Derivatives, LLC, KalshiEX LLC, Bitnomial Exchange, LLC, and North American Derivatives Exchange, Inc.).

[24] Kalshi Filing, at 47 n.62.

[25] *Id.* at 49 n.69.

[26] *Id.* at 53 (describing proposed Rule 14.38(d)).

[27] Rule 3.66 Disapproval Order, 89 FR at 88082, 88088.

[28] 17 CFR 201.700(b)(3); *Susquehanna Int'l Grp., LLP v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017).

[29] Rule 3.66 Disapproval Order, 89 FR at 88088.

The functions the broker affiliate would perform bear directly on the facility analysis.[30] Whether those functions make the affiliate a facility is, at a minimum, a question for the Commission to resolve.

V. THE COMMISSION SHOULD NOT IMPORT THE DCM/FCM MODEL WITHOUT CAREFUL CONSIDERATION

The Staff Statement notes the CFTC's recent proposal on affiliations among CFTC-regulated entities.[31] We support coordination between the agencies. But the DCM/FCM model—under which a designated contract market ("DCM") is affiliated with an FCM—developed under a different statutory framework. Several differences between that framework and the Exchange Act warrant careful consideration before the Commission accepts the model, including whether the Exchange Act permits it at all. Two stand out:

Market structure. Futures generally must be traded on or subject to the rules of a DCM.[32] In that setting, the exchange is the market for its contracts. Equities, by contrast, may trade on many exchanges, on alternative trading systems, and over the counter through broker-dealers, all within a national market system that Congress directed the Commission to facilitate, with consolidated quotation and transaction information and the ability to execute investors' orders in the best market.[33] Vertical integration of an exchange with its access broker raises different questions in these two settings.

Transparency and data dissemination. Security futures are not NMS securities, and trading in them is not reflected in the consolidated data for NMS stocks. Each exchange will publish its own data on its own terms. Yet these contracts depend on NMS price formation: Kalshi's funding mechanism references the last-sale price of the underlying stock as reported by the securities information processor.[34]

For these reasons, any decision to accept the DCM/FCM affiliation model within the regulatory perimeter of the Commission should follow a deliberate Commission process and, at a minimum, be confined to notice-registered security futures exchanges and futures-type products. It should not be extended to exchanges registered under Section 6, or to NMS stocks or listed options.

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[30] Kalshi Filing, at 47 (describing proposed Rule 14.38(e)).

[31] Staff Statement (citing 91 FR 50926 (Aug. 6, 2026)).

[32] CEA § 4(a).

[33] Exchange Act Section 11A(a)(1)(C).

[34] Kalshi Filing, at 30.

VI. MEANINGFUL REVIEW REQUIRES THAT THE COMMISSION RETAIN THE ABILITY TO SHAPE THE RULES

The notice-registration framework offers limited opportunity for Commission review. A notice registration becomes effective when the Form 1-N is filed.[35] A notice-registered exchange must file only specified categories of rule changes with the Commission, and changes filed under Section 19(b)(7) take effect through the CFTC process.[36] The Commission does not approve them. Its principal remedy is to summarily abrogate a rule change within 60 days of its effectiveness, after consulting the CFTC, and require that it be refiled under Section 19(b)(1).[37] The Commission cannot require an exchange to amend a particular provision; its choice is between allowing the rule to stand and abrogating it.

Subsequent changes receive even less review. Under the CFTC's self-certification procedures, a DCM may list a new product by certifying it no later than the business day before listing, and may implement most rule changes ten business days after certification.[38] Changes in how an exchange administers its relationship with its affiliate, including whether to condition or suspend its privileges, may occur with no Commission filing at all. The terms of an exchange's relationship with its affiliated broker are precisely the provisions the public should be able to comment on meaningfully and the Commission should be able to require changes to.

We therefore recommend that the Commission:

1. Reaffirm that the Exchange Act does not permit an exchange to determine for itself that an affiliate is not a facility;
2. Ensure that any filing involving an exchange-affiliated broker complies with the Exchange Act and reject any proposal that does not. Where the Commission determines that appropriate safeguards would permit the arrangement consistent with the Exchange Act, address any request for relief from the obligations of facility status instead through a Commission order under Section 36, with notice and an opportunity for comment, Commission-set conditions tailored to the broker's functions (including access, data distribution, margin, and custody), and periodic reporting to the Commission;
3. Where appropriate, use its authority under Section 19(b)(7)(C) to require that rule changes embedding exchange-made facility determinations be refiled under Section 19(b)(1); and

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[35] Exchange Act Section 6(g)(2)(B); *see, e.g.*, Securities Exchange Act Release No. 106296 (Sept. 8, 2026), 91 FR 57947 (Sept. 11, 2026) (KalshiEX LLC).

[36] Exchange Act Sections 6(g)(4)(B), 19(b)(7)(A)–(B).

[37] Exchange Act Section 19(b)(7)(C).

[38] 17 CFR 40.2(a), 40.6(a); *see also* 17 CFR 41.23, 41.24.

4. Coordinate with the CFTC so that any CFTC framework for DCM/FCM affiliations is not treated as satisfying the distinct requirements of the Exchange Act.

CONCLUSION

The facility definition has served the markets for more than ninety years because it is broad enough to reach new technologies and business structures, ensuring investor protection and transparency while promoting innovation.

At a time when the Commission is seeking to allow unprecedented experimentation at the front end of the regulatory process, it is imperative that the Commission retain the tools it has historically used to ensure investor protections at the back end.

The Cboe Exemption Order shows that the Commission can provide flexibility without relinquishing its oversight authority. We urge the Commission to take the same approach to exchange-affiliated brokers and to preserve its ability to review, and require changes to, the rules that govern those relationships. We appreciate the opportunity to comment and would be pleased to discuss these issues with the Commission or its staff.

Very truly yours,



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