

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105351]

Order Granting Conditional Exemptive Relief Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 (“Exchange Act”) 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. (“Cboe” or “Exchange”) or Pursuant to a Contract with the Exchange

May 1, 2026

I. Introduction

On March 24, 2026, the Exchange submitted a request for exemptive relief pursuant to section 36(a)(1) of the Exchange Act¹ from the requirement to file proposed rule changes under section 19(b) of the Exchange Act² and the requirements under section 6(b) of the Exchange Act³ with respect to order and execution management systems (“OEMS”) offered by an Exchange affiliate or pursuant to a contractual relationship with the Exchange (“Exchange Affiliated OEMSs”), subject to certain conditions.⁴

According to the Exchange, an OEMS is a software product that market participants may install on their computer systems and use to enter and route orders for execution and manage

¹ 15 U.S.C. 78mm(a)(1).

² 15 U.S.C. 78s(b).

³ 15 U.S.C. 78f(b).

⁴ See Letter from Patrick Sexton, Chief Regulatory Officer, Cboe Exchange Inc., dated March 24, 2026 (“Exemption Request”).

such executions.⁵ For example, Cboe Silexx, LLC, a Cboe affiliate, offers an OEMS, Silexx.⁶ Silexx is a “facility” of the Exchange as that term is defined in section 3(a)(2) of the Exchange Act.⁷ As a facility of the Exchange, it must satisfy the regulatory requirements applicable to a national securities exchange, including certain rule filing requirements under section 19(b) and the requirements under section 6(b) of the Exchange Act.⁸ In compliance with these requirements, the Exchange has filed numerous proposed rule changes on behalf of Silexx.⁹ Use of Silexx by Cboe members is voluntary; members may also use an OEMS supported by a third-party to enter and route orders for execution to the Exchange and manage such executions.¹⁰

For the reasons discussed below, the Securities and Exchange Commission (the “Commission” or the “SEC”) has determined to grant conditional exemptive relief pursuant to its authority under section 36(a)(1) of the Exchange Act¹¹ to the Exchange for Exchange Affiliated

⁵ See Exemption Request at 1-2.

⁶ See Exemption Request at n.4; See also Securities Exchange Act Release No. 82088 (Nov. 15, 2017), 82 FR 55443 (Nov. 21, 2017) (SR-CBOE-2017-068) (describing the functionality and adopting fees for the use of Silexx).

⁷ See Securities Exchange Act Release No. 101491 (Oct. 31, 2024), 89 FR 88080 (Nov. 6, 2024). Section 3(a)(2) of the Exchange Act states: The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the property or not, any right to 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), and any right of the exchange to the use of any property or service. 15 U.S.C. 78c(a)(2).

⁸ 15 U.S.C. 78s(b) and 78f(b).

⁹ See, e.g., Securities Exchange Act Release Nos. 83266 (May 14, 2018), 83 FR 23310 (May 18, 2018) (SR-CBOE-2018-035); 87028 (Sept. 19, 2019), 84 FR 50529 (Sept. 25, 2019) (SR-CBOE-2019-061); 89285 (July 10, 2020), 85 FR 43284 (July 16, 2020) (SR-CBOE-2020-062); 90929 (Jan. 14, 2021), 86 FR 6705 (Jan. 22, 2021) (SR-CBOE-2021-002); 99111 (Dec. 7, 2023), 88 FR 86411 (Dec. 13, 2023) (SR-CBOE-2023-064).

¹⁰ See Exemption Request at 5-6.

¹¹ 15 U.S.C. 78mm(a)(1).

OEMSs from the rule filing requirements under section 19(b) of the Exchange Act and the requirements under section 6(b) of the Exchange Act.¹²

II. Description and Discussion of Exemption Request

In its Exemption Request, Cboe states that Exchange Affiliated OEMSs are at a “substantial competitive disadvantage” as compared to OEMSs offered by third-parties that are not affiliated with the Exchange due to the regulatory requirements they must comply with as a result of their status as facilities.¹³ In particular, the Exchange states that the rule filing process hinders Exchange-Affiliated OEMSs’ ability to dynamically adjust their fee schedules to compete in the market and allows competitors to proactively react to material changes to the Exchange-Affiliated OEMS even prior to any change being implemented.¹⁴ The Exchange further states that facility status thus stifles innovation and competition among OEMSs.¹⁵ To level the regulatory playing field among OEMSs, the Exchange has requested that the Commission grant exemptive relief to Exchange Affiliated OEMSs from the rule filing requirements under section 19(b) of the Exchange Act and the requirements under section 6(b) of the Exchange Act, provided the Exchange satisfies the following conditions (“Exemption Conditions”):

1. **Voluntary Use of Exchange-Affiliated OEMS.** The use of the Exchange-Affiliated OEMS is voluntary (*i.e.*, solely within the discretion of an Exchange member or other user of the OEMS) and not required for an Exchange member to access the Exchange (*i.e.*, the OEMS is a nonexclusive means of access to the

¹² 15 U.S.C. 78s(b) and 78f(b).

¹³ See Exemption Request at 4.

¹⁴ See id. at 4-5.

¹⁵ See id. at 5.

Exchange).¹⁶

2. **Same Terms for Exchange Connection.** There will be no differences between how third-party and Exchange-Affiliated OEMSs may connect to the Exchange. The ports, terms and conditions, and fees related to connecting to the Exchange will be the same for any user of a third-party OEMS and any user of an Exchange-Affiliated OEMS. Such connectivity requirements and fees will be set forth in the Exchange's Rules, technical specifications, and Fees Schedule.¹⁷
3. **Any Exchange-Affiliated OEMS is not a Registered Broker-Dealer.** The Exchange-Affiliated OEMS (or the entity that owns the Exchange-Affiliated OEMS) is not a registered broker-dealer.¹⁸
4. **Routing Orders to the Exchange via OEMSs.** For any order ultimately routed to the Exchange via an Exchange-Affiliated OEMS, the users of such OEMS and their brokers are solely responsible for routing decisions (*i.e.*, the Exchange is not involved in such routing decisions). All orders received by the Exchange from a third-party or Exchange-Affiliated OEMS shall be processed by the Exchange in the same manner and pursuant to the Exchange's rules (*i.e.*, orders sent by users of third-party OEMSs shall not be disadvantaged and orders sent by Exchange-Affiliated OEMSs shall receive no preferential treatment on the Exchange).¹⁹
5. **Fees Charged by the Exchange and Exchange-Affiliated OEMS.** Any fees charged by the Exchange-Affiliated OEMS to a user thereof must not take into

¹⁶ See id. at 6.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id.

consideration any of that user's Exchange activity or to Exchange fees set forth on the Exchange's fees schedule.²⁰ Correspondingly, any fees charged by an Exchange to a member thereof must not take into consideration that member's activity on the Exchange-Affiliated OEMS. Similarly, the Exchange will no longer provide rebates to users of an Exchange-Affiliated OEMS whether on the Exchange floor or otherwise.²¹

6. **Use of Exchange Services on Same Terms.** Users of third-party OEMSs and Exchange-Affiliated OEMSs will have use of the Exchange facilities and services (*e.g.*, Exchange market data) in the same manner pursuant to the same terms, conditions, and fees as set forth in the Exchange's Rules, technical specifications, and Fees Schedule.²²

7. **Procedures and Internal Controls.** The Exchange has established and maintains procedures and internal controls reasonably designed to prevent the Exchange-Affiliated OEMS from receiving any advantage or benefit as a result of its affiliation/relationship with the Exchange, including the provision of Exchange information to the entity or personnel operating the Exchange-Affiliated OEMS regarding updates to the Exchange trading system (such as technical specifications) until such information is available generally to similarly situated market participants.²³

²⁰ The Exchange notes that fees charged by an Exchange-Affiliated OEMS may be competitively established and may vary among users of such Exchange-Affiliated OEMS. See id. at n.19

²¹ See id. at 6-7.

²² See id. at 7.

²³ See id.

The Exchange states that these conditions address the objectives of section 19(b) and section 6 of the Exchange Act.²⁴ In particular, the Exchange states the Exemption Conditions are just and equitable because they do not mandate the use of any particular OEMS, whether an Exchange-Affiliated OEMS or third-party OEMS, and access to the Exchange will be the same regardless of the OEMS used by a user or trading permit holder (“TPH”).²⁵ The Exchange states that the proposed exemption requires the equitable allocation of Exchange fees irrespective of the OEMS used by a user or TPH, and also requires that any fees charged by an Exchange-Affiliated OEMS be unrelated to a user’s activity on the Exchange.²⁶ The Exchange states that, for example, the determination of an Exchange-Affiliated OEMS to charge a reduced fee to its users based on higher volumes executed on the Exchange would be inconsistent with the Exemption Conditions and would require a rule filing.²⁷ The Exchange states that, correspondingly, any fees charged by the Exchange to a TPH must be unrelated to the member’s activity on the Exchange-Affiliated OEMS, and vice versa.²⁸

The Exchange states that the Exemption Conditions also remove impediments to and perfect a free and open market by eliminating any potential for benefits to be realized as a result of the affiliation between the Exchange and the Exchange-Affiliated OEMS.²⁹ The Exchange states that the Exemption Conditions also require that third-party OEMSs and Exchange-Affiliated OEMSs have use of the Exchange facilities and services in the same manner pursuant

²⁴ See id. at 5.

²⁵ Id.

²⁶ Id.

²⁷ Id. at n.18.

²⁸ Id. at 5.

²⁹ Id.

to the same terms, conditions, and fees, and that orders sent to the Exchange by third-party OEMSs and Exchange-Affiliated OEMSs are treated in the same manner.³⁰ The Exchange states that the Exemption Conditions prevent unfair discrimination and impose no burden on competition as any user or TPH may use any OEMS for order handling and accessing the Exchange on equal terms.³¹ The Exchange states that the proposed exemption is designed to level the playing field between Exchange-Affiliated OEMSs and third-party OEMSs and promotes competition, which ultimately benefits investors.³² The Exchange states that proposed exemption specifically states that third-party OEMSs shall not be disadvantaged vis-à-vis users of Exchange-Affiliated OEMSs.³³ The Exchange states that while the proposed exemption would exempt Exchange-Affiliated OEMSs from Sections 19(b) and 6(b) of the Exchange Act, the Commission would retain jurisdiction over such OEMSs which would allow it to seek books and records as necessary to affirm compliance with the Exemptive Conditions.³⁴

III. Exemptive Relief Under Section 36

Section 36(a)(1) of the Exchange Act grants the Commission the authority to “conditionally or unconditionally exempt any person, security, or transaction . . . from any provision or provisions of [the Exchange Act] or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.”³⁵ The conditional exemptive relief granted herein is appropriate

³⁰ Id.

³¹ Id. at 5-6.

³² Id. at 6.

³³ Id.

³⁴ Id.

³⁵ 15 U.S.C. 78mm(a)(1).

in the public interest and consistent with the protection of investors because the conditions are reasonably designed to ensure that an Exchange Affiliated OEMS operates in a manner that is consistent with the Exchange Act, the Commission will retain the ability to oversee the Exchange and Exchange Affiliated OEMS, and this relief will promote competition in the market for OEMS services.³⁶

The Exemption Conditions described above help ensure that neither the Exchange nor an Exchange Affiliated OEMS operate in a manner that (i) would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act,³⁷ (ii) would unfairly discriminate between customers, issuers, brokers, or dealers,³⁸ or (iii) would result in an unequitable allocation of reasonable dues, fees, and other charges among the Exchange's members and issuers and other persons using its facilities.³⁹ Because an Exchange Affiliated OEMS that operates within the terms of the Exemption Conditions and its users would operate on equal terms vis-à-vis the Exchange as third-party OEMSs and their users, it is appropriate to treat such an Exchange Affiliated OEMS similarly to third-party OEMSs with respect to the requirements of section 19(b) and section 6(b) of the Exchange Act. An exemption, subject to the Exemption Conditions, from the requirements of section 19(b) and section 6(b) of the Exchange Act concerning operation of an Exchange Affiliated OEMS may also help foster competition, innovation, and access in the market for OEMS products and services.

While the Commission is granting certain exemptive relief to Exchange Affiliated OEMSs that comply with the Exemption Conditions, Exchange Affiliated OEMSs that are

³⁶ See id.

³⁷ 15 U.S.C. 78f(b)(8).

³⁸ 15 U.S.C. 78s(b)(5).

³⁹ 15 U.S.C. 78s(b)(4).

“facilities” of the Exchange as defined in Section 3(a)(2) of the Exchange Act,⁴⁰ like Silexx, remain subject to all other requirements applicable to the facilities a national securities exchange under the Exchange Act and the rules and regulations thereunder. For example, the Exchange and such Exchange Affiliated OEMS are subject to the provisions in section 17(a) of the Exchange Act,⁴¹ and the rules and regulations thereunder relating to books and records requirements.⁴² Similarly, the Exchange and such Exchange Affiliated OEMS are subject to section 17(b) of the Exchange Act, and the rules and regulations thereunder that require a national securities exchange to make itself available to inspection and examination by the Commission.⁴³

For the reasons discussed herein, the Commission determines that the conditional exemptive relief granted herein satisfies the standard of section 36(a)(1) of the Exchange Act.

Accordingly, IT IS ORDERED, pursuant to section 36(a)(1) of the Exchange Act, that the Exchange is exempt from the rule filing requirements under section 19(b) of the Exchange Act⁴⁴ and the related requirements under section 6(b) of the Exchange Act that would have been

⁴⁰ See supra note 7 for definition of facility under the Exchange Act.

⁴¹ Section 17(a) of the Exchange states, “every national securities exchange . . . shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this chapter.” 15 U.S.C. 78q(a).

⁴² Exchange Act Rule 17a-1 requires a national securities exchange (and by extension a facility thereof) to: (i) keep and preserve at least one copy of all documents, including all correspondence, memoranda, papers, books, notices, accounts, and other such records as shall be made or received by it in the course of its business as such and in the conduct of its self-regulatory activity; (ii) keep all such documents for a period of not less than five years, the first two years in an easily accessible place, subject to the destruction and disposition provisions of Rule 17a-6; and (iii) upon request of any representative of the Commission, promptly furnish to the possession of such representative copies of any documents required to be kept and preserved by it pursuant to paragraphs (a) and (b) of the Rule. See 17 CFR 240.17a-6.

⁴³ 15 U.S.C. 78q(b).

⁴⁴ 15 U.S.C. 78s(b)

applicable to the rules filed under section 19(b)⁴⁵ with respect to an Exchange Affiliated OEMS if the Exemption Conditions are met.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

⁴⁵ 15 U.S.C. 78f(b).