

April 29, 2026

**VIA ELECTRONIC SUBMISSION**

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

Re: Notice of an Application of MEMX LLC for Temporary Exemptive Relief From Compliance with Certain Provisions of Rule 610(c) of Regulation NMS, as Amended, Pursuant to Section 36(a)(1) of the Securities Exchange Act of 1934 and Rule 610(f) of Regulation NMS, and Request for Comment

Ms. Countryman,

The Securities and Exchange Commission (“SEC” or “Commission”) is seeking comment<sup>1</sup> on an exemptive relief request from MEMX LLC (“MEMX”) that would temporarily delay implementation of the Commission’s September 2024 amendments to Regulation NMS (“Reg NMS”) Rule 610(c),<sup>2</sup> which would reduce the access fee caps for certain securities. The compliance date for the amended fee caps is November 2, 2026.<sup>3</sup> MEMX also requested that the Commission allow exchanges to temporarily charge an access fee of up to \$0.0015 rather than the amended \$0.0010 access fee caps for Reg NMS stocks trading in half-penny increments.

Cboe Global Markets, Inc. (“Cboe”) requests that the Commission postpone the access fee caps’ compliance date, allowing the existing fee caps to remain in place while the Commission considers broader changes to Reg NMS. Similarly, while not specifically requested in MEMX’s application for exemptive relief, Cboe believes that the Commission should also delay the implementation of the tick-size changes required under amended Reg NMS Rule 612.<sup>4</sup>

As the operator of four national securities exchanges Cboe is well positioned to offer its perspective on MEMX’s exemptive relief request. Cboe was deeply involved<sup>5</sup> in the 2024 access

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<sup>1</sup> See Securities Exchange Act Release No. 34-105058 (March 20, 2026), 91 FR 14602 (March 25, 2026) available at <https://www.sec.gov/files/rules/exorders/2026/34-105058.pdf>.

<sup>2</sup> 17 CFR § 242.610(c).

<sup>3</sup> Affected Rules 600(b)(89)(i)(F), 610(c) and 612. See Securities Exchange Act Release No. 104172 (October 31, 2025), 90 FR 51418 (November 17, 2025) available at <https://www.sec.gov/files/rules/exorders/2025/34-104172.pdf>.

<sup>4</sup> 17 CFR § 242.612.

<sup>5</sup> See Letters from Angelo Evangelou, Cboe Global Markets, Inc., dated Feb. 28, 2023 available at <https://www.sec.gov/comments/s7-30-22/s73022-20158236-326301.pdf>; Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc., dated Mar. 31, 2023 available at <https://www.sec.gov/comments/s7-31-22/s73122-20162799-332207.pdf>; Patrick Sexton, EVP, General

fee caps rulemaking process and possesses an institutional understanding of how aspects of Reg NMS such as tick-sizes, access fee caps, and order protection interact with each other. Cboe agrees with MEMX's core argument: Reg NMS reform should be coordinated rather than modified on a piecemeal basis. The inextricable linkage between access fee caps (Rule 610) and the order protection rule (Rule 611 or, "OPR") means that advancing changes to access fee caps before the Commission resolves the future of OPR risks producing unnecessary market structure disruption. Therefore, Cboe agrees with MEMX that the implementation of the amended access fee caps should be deferred until the Commission has fully considered any changes it may make to OPR. However, Cboe believes the deferral should apply to *all* securities — not just the subset MEMX identified — since linkage between access fee caps and order protection is not confined to a category of securities.

The November 2, 2026, compliance date is particularly significant given that the Commission has indicated, including through two public roundtables, that it intends to propose amendments to OPR in the near future. OPR is closely linked to access fee caps not just from Cboe's perspective but also as reflected in the rule text itself: Rule 610(c) applies specifically to fees charged for execution against protected quotes, while Rule 611 prohibits trading through protected quotes. Tackling these related rules on a piecemeal basis risks unnecessary confusion and market disruption. As such, Cboe believes it is prudent for the Commission to defer implementation of the amended access fee caps until the Commission has fully considered any changes to OPR.

To be clear, regardless of the outcome of OPR, Cboe does not believe access fee caps are appropriate. Access fee caps function as government-imposed price controls. It should not be the role of the government to set prices, especially in a market as competitive as the securities industry. Furthermore, exchange fees are heavily regulated and already subject to SEC review. In addition, as noted in previous comments to the Commission, Cboe opposes lowering the current access fee caps to \$0.0010. Reducing the current access fee caps so dramatically harms the ability of exchanges to attract displayed liquidity by reducing exchanges' ability to provide rebates,<sup>6</sup> and a reduction in displayed liquidity could deteriorate the quality of the National Best Bid and National Best Offer ("NBBO"). Given the reliance that market participants and investors place on the NBBO today, the Commission should carefully consider potential harm to the NBBO that could result from a drastic reduction in exchanges' ability to provide rebates.

Cboe believes that, for now, the Commission should defer implementation of the amended access fee caps and leave them at their current levels until the Commission has fully considered any changes to OPR, at which point the Commission may reconsider access fee caps altogether. In the alternative, if the Commission decides not to delay the compliance date, then Cboe believes that for the purposes of any exemptive relief the Commission may grant, any access fee cap reduction should apply only to securities that will have a revised tick-size (i.e., those securities priced at or greater than \$1.00). Additionally, if the compliance date is not delayed, the Commission should apply an access fee of \$0.0015 rather than \$0.0010. Moreover, because the tick-sizes for sub-dollar securities are not changing, the access fee cap for sub-dollar securities should remain unchanged.

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Counsel & Corporate Secretary, Cboe Global Markets, Inc., dated Aug. 23, 2023 available at <https://www.sec.gov/comments/s7-30-22/s73022-249719-570262.pdf>; Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc., dated Apr. 5, 2024 available at <https://www.sec.gov/comments/s7-30-22/s73022-455851-1167994.pdf>.

<sup>6</sup> See Letter from Patrick Sexton, EVP, General Counsel & Corporate Secretary, Cboe Global Markets, Inc., dated Apr. 5, 2024 available at <https://www.sec.gov/comments/s7-30-22/s73022-455851-1167994.pdf>.

Cboe further believes that given the inextricable linkage between access fee caps and the tick-size increment, the Commission should also delay the implementation of amended Rule 612. Should the Commission decide, however, to implement any changes to the tick-size increment, Cboe believes tick-size changes should be gradual rather than introduced en masse. The quantity of securities in scope of the half-penny increment is too extensive. This increment was introduced to unlock price discovery purely for large, liquid securities where a full penny poses an obstacle. Additionally, Cboe continues to believe that sub-\$1 securities should be explicitly exempted from the half-penny framework. The 0.1% of quotation price caps on sub-\$1 securities results in the assessment of extremely minute access fees and sub-\$1 securities operate under fundamentally different liquidity and market conditions. As such, they should not be swept into a framework designed for large-cap, high-volume equities. If the Commission decides to keep its current framework for determining which securities are tick-constrained, Cboe believes that starting with a smaller set of securities is a prudent approach. This will allow the scope to be widened later, if necessary, rather than bringing hundreds of securities into the half-penny increment threshold overnight.

As MEMX stated, the Fifth Circuit's ruling in *Nat'l Ass'n of Priv. Fund Managers v. SEC* makes clear that given OPR and access fee caps' interrelatedness, the Commission should consider their cumulative impact.<sup>7</sup> Cboe therefore urges the Commission to postpone the access fee caps' compliance date, allowing the existing fee caps to remain in place until the future of OPR is clarified. If OPR is modified or eliminated, the Commission should revisit the suitability of the amended fee caps altogether.

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Cboe thanks the Commission for the opportunity to comment on this topic and welcomes further discussion.

Sincerely,

*s/ Patrick Sexton*

Patrick Sexton  
EVP, General Counsel, and Corporate Secretary  
Cboe Global Markets, Inc.

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<sup>7</sup> *Nat'l Ass'n of Priv. Fund Managers v. SEC*, No. 23-60626 (5th Cir. 2025).