

Cboe Digital Exchange, LLC
433 West Van Buren Street
Suite 700S
Chicago, IL 60607

June 1, 2026

VIA ELECTRONIC MAIL (DMOletters@cftc.gov)

Mr. Joshua Beale
Acting Director
Division of Market Oversight
U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

**Re: Request for Time-Limited No-Action Relief from Commission
Regulations 40.1 and 38.3(b)**

Dear Acting Director Beale:

Cboe Digital Exchange, LLC ("**Cboe Digital**") respectfully requests that staff of the Division of Market Oversight ("**Division**") issue a no-action letter stating that it will not recommend that the Commodity Futures Trading Commission ("**CFTC**" or "**Commission**") take enforcement action (i) to the extent Cboe Digital would otherwise be deemed "dormant" under Commission Regulation 40.1 and (ii) for failure to comply with the reinstatement provisions of Commission Regulation 38.3(b), such that, if Cboe Digital lists products for trading after the 365th day without having reinstated its designation, staff will not recommend enforcement action against Cboe Digital or any market participant that trades on Cboe Digital during the Relief Period (as defined below), in each case subject to the facts and conditions described herein.

I. Background

Cboe Digital is a Delaware corporation and has been designated by the Commission as a contract market since October 2011.¹ Cboe Digital, originally designated under the name Eris Exchange, was acquired by Cboe Digital Holdings, Inc. on May 2, 2022 and changed its name to Cboe Digital Exchange, LLC on October 1, 2022. Cboe Digital provides a regulated trading venue for futures contracts and operates alongside Cboe Clear U.S., LLC, a CFTC-registered derivatives clearing organization.

On June 9, 2025, Cboe Digital successfully transferred each of its futures products – financially-settled margin futures on Bitcoin ("FBT") and on Ether ("FET") to its affiliate, Cboe Futures Exchange, LLC ("CFE"). Since June 6, 2025, Cboe Digital has not listed any additional products and absent trading, Cboe Digital will go dormant effective June 6, 2026.

¹ *In re* Application of Cboe Digital Exchange for Designation as a Contract Market (Oct. 28, 2011).

Cboe Digital is currently evaluating commercial partnerships, sales opportunities, and strategic investments; however, if Cboe Digital becomes dormant, it risks losing value and limiting future optionality.

II. Applicable Law

Commission Regulation 40.1 defines a dormant DCM as “any designated contract market on which no trading has occurred for a period of 365 days *provided, however*, no designated contract market shall be considered dormant if its initial and original Commission order of designation was issued within the preceding 1,095 days.”² In concert with the dormant DCM definition, Commission Regulation 38.3(b) requires in relevant part that:

Before listing or relisting products for trading, a dormant designated contract market as defined in § 40.1 of this chapter must reinstate its designation under the procedures of paragraphs (a)(1) and (2) of this section....

The Commission adopted the dormancy and reinstatement framework to address concerns that prolonged inactivity may affect a registered entity's ability to remain in full compliance with evolving statutory and regulatory requirements and with self-regulatory best practices.³ In the adopting release to Commission Regulation 38.3, the Commission recognized the need to ensure that a previously inactive platform can implement rules and list products in a manner consistent with current market conditions and Commission regulations at the time trading resumes.

III. Request for No-Action Relief

Cboe Digital requests that, in advance of June 6, 2026, the Division issue a no-action letter providing relief subject to the conditions described herein, for Cboe Digital and any market participant that seeks to trade on Cboe Digital, if, notwithstanding that Cboe Digital would otherwise be deemed to be a “dormant designated contract market” pursuant to Commission Regulation 40.1, Cboe Digital lists products for trading without having reinstated its designation pursuant to Commission Regulation 38.3(b).

Cboe Digital respectfully requests the no-action relief be subject to the following conditions:

² Cboe Digital's initial and original order of designation occurred on October 28, 2011. Therefore, the 1,095 day period for an initial and original order of designation has passed.

³ See *Amendments to New Regulatory Framework for Trading Facilities and Clearing Organizations*, 67 FR 62873, 62874 (Oct. 9, 2002) (stating : “[t]he Commission proposed to amend parts 37, 38, 39 and 40 of its rules to clarify that, when a registered entity that has become dormant determines to list or relist an initial product for trading...it must demonstrate that it continues to satisfy the criteria for designation or registration”); see also *Amendments Pertinent to Registered Entities and Exempt Commercial Markets*, 73 FR 8599, 8600 (Feb. 14, 2008) (stating: “[t]he Commission recognizes that a significant period of inactivity can potentially have a negative impact on a registered entity's ability to implement rules and list and clear contracts in a manner that remains consistent with current market conditions, the Commission's regulations, and self-regulatory best practices”).

- A. Duration: We request that the no-action position will remain in effect from the date of issuance of the letter until the earlier of (i) ten months after the issuance of the letter, or (ii) the close of business on the date on which a trade is executed on or pursuant to the rules of Cboe Digital (the “Relief Period”). Any such trading activity occurring during the Relief Period will reset the 365-day inactivity period that underlies the definition of a “dormant designated contract market” as applied to Cboe Digital.
- B. Certification of Products. During the Relief Period, Cboe Digital will (i) only list for trading products that are individually submitted to the Commission in accordance with the requirements and procedures set forth in Part 40 of the Commission’s regulations, and (ii) provide the Division with at least two business days’ prior written notice of each initial listing of any such product.
- C. Compliance Representations.
 - a. Throughout the Relief Period, Cboe Digital will continue to routinely engage with Division staff regarding any material modifications to its business, operations, systems, policies or programs that might occur as a result of any commercial partnerships, sales opportunities, and strategic investments; and will provide any information relating to any such modifications that is reasonably requested by Division staff.
 - b. Cboe Digital will provide written notice to the Division at least ten business days prior to the first listing for trading of a product during the Relief Period, and will provide concurrently with such notice a written representation from an authorized representative of Cboe Digital that, subject solely to the no-action position provided herein with respect to the “dormant designated contract market” definition in Commission Regulation 40.1 and the requirements of Commission Regulation 38.3(b), Cboe Digital remains in compliance with all provisions of the Commodity Exchange Act (“CEA”) and all requirements set forth in the Commission’s regulations that are applicable to DCMs, including clearing-related requirements set forth in Commission Regulation 38.601 and applicable self-regulatory obligations.
- D. Reinstatement Backstop. If trading has not commenced on Cboe Digital within 10 months of this letter, then to list products for trading, Cboe Digital must reinstate its designation pursuant to Commission Regulation 38.3(b).

These conditions are intended to ensure transparency, accountability, and an orderly resumption of trading, while preserving the Commission’s oversight. We acknowledge that the Commission has emphasized, in adopting dormancy-related amendments, that prolonged inactivity could negatively affect an entity’s ability to operate in a manner consistent with current Commission regulations and market conditions. The conditions proposed above would directly and effectively mitigate this concern.

IV. Rationale

We believe that the requested relief is narrowly tailored and consistent with the CEA's objective to promote responsible innovation and fair competition. Time-limited relief would allow Cboe Digital to resume trading promptly in coordination with the Division while continuing to comply with Part 38 and other applicable Commission regulations. This request accords with Regulations 38.3(b) and 40.1 and the Commission's dormancy policy, which recognizes dormancy as a proxy for potential compliance drift.

Here, Cboe Digital is evaluating potential investments and commercial opportunities in furtherance of this intention that will expand its optionality. To that end, Cboe Digital intends to fully cooperate and communicate with the Division regarding all activities undertaken to ensure Cboe Digital remains an active DCM in good standing with the Commission.

Commission staff recently provided similar relief. In CFTC Staff Letter No. 25-46, staff issued no-action relief to Small Exchange, Inc. ("Small Exchange"), a DCM, from Commission Regulation 40.1, allowing Small Exchange to list products for trading without having reinstated its designation pursuant to Commission Regulation 38.3(b).⁴ In granting relief, staff noted that Small Exchange is subject to three conditions: (i) a defined duration, terminating on the earlier of October 10, 2026 or the execution of a trade on Small Exchange, with any such trading activity resetting the 365-day inactivity period; (ii) limitations on product certification, requiring that all products be individually submitted pursuant to Part 40 and that advance notice be provided to the Division; and (iii) ongoing compliance representations, including engagement with the Division regarding material changes and confirmation of continued compliance with applicable Commission regulations.⁵

Cboe Digital intends to take an approach similar to the one adopted in Commission Letter No. 25-46 by complying with all applicable statutory and regulatory obligations during any possible dormancy period, as well as fully engaging the Division throughout this process to ensure continued DCM compliance. Moreover, from the date of Cboe Digital's last trade, it has engaged with Commission staff regularly and has continued to meet its regulatory obligations under the Commission's regulations, including submitting its quarterly financial filings and maintaining capital and liquid assets necessary to comply with CFTC Regulation 38.1101.

Finally, we believe that granting the requested relief would be consistent with Section 3 of the CEA, which states in part that an underlying purpose of the CEA is to "promote responsible innovation."⁶ By permitting Cboe Digital to continue to operate and develop new offerings (in coordination with Division staff) without requiring it to also undergo the lengthy reinstatement process, this objective will be achieved. In addition, granting the requested relief would further the public interest by allowing a recently recapitalized registered entity to remain and grow within U.S. derivatives markets, increasing competition and promoting robust trading and product innovation.

⁴ Commission Letter No. 25-46 (Dec. 11, 2025), available at <https://www.cftc.gov/csl/25-46/download>.

⁵ *Id.* at 3.

⁶ 7 U.S.C. § 5(b).

V. Conclusion

For the reasons set forth above, Cboe Digital respectfully requests that staff not recommend an enforcement action against Cboe Digital, or against any market participant that seeks to trade on Cboe Digital, if, subject to the conditions stated above, notwithstanding that Cboe Digital would otherwise be deemed to be a “dormant designated contract market” pursuant to Commission Regulation 40.1, Cboe Digital lists products for trading without having reinstated its designation pursuant to Commission Regulation 38.3(b).

Cboe Digital appreciates the Commission staff’s time and attention to this matter. If you have any questions or require further information or documentation, please contact the undersigned at psexton@cboe.com with copies to mmargolis@cboe.com.

Respectfully,

/s/ Patrick Sexton

Patrick Sexton

Executive Vice President, General Counsel and Corporate Secretary
Cboe Digital Exchange, LLC

Certification and Undertaking

I hereby certify that the material facts set forth in this letter dated June 1, 2026 are true and complete to the best of my knowledge.

/s/ Patrick Sexton

Patrick Sexton

Executive Vice President, General Counsel and Corporate Secretary

Cboe Digital Exchange, LLC

On behalf of Cboe Digital Exchange, LLC, the signatory above undertakes that, if at any time prior to the Division's issuance of a response to this request any material representation made herein ceases to be true and complete, Cboe Digital will promptly inform Commission staff in writing of all materially changed facts and circumstances. If a material change in facts or circumstances occurs subsequent to issuance of a staff response, Cboe Digital will promptly so inform Commission staff.

/s/ Patrick Sexton

Patrick Sexton

Executive Vice President, General Counsel and Corporate Secretary

Cboe Digital Exchange, LLC