

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106659; File No. SR-CBOE-2026-061]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Permit the Listing of Binary Options Overlying Key Performance Indicators Reported by Certain Issuers of Stock

October 13, 2026.

I. Introduction

On June 30, 2026, Cboe Exchange, Inc. (“Exchange” or “Cboe”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to allow the Exchange to list binary options overlying specified key performance indicators (“KPI(s)”) reported by certain issuers of stock (“binary KPI options”). The proposed rule change was published for comment in the Federal Register on July 15, 2026.³ On August 26, 2024, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received comments regarding the proposed rule change.⁶ On October 1, 2026, the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 105877 (July 10, 2026), 91 FR 43418.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 106196, 91 FR 55918 (August 31, 2026). The Commission designated October 13, 2026, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ Comments received are available at: <https://www.sec.gov/rules-regulations/public-comments/sr-cboe->

Exchange filed Amendment No. 1 to the proposed rule change, which replaces and supersedes the original filing in its entirety.⁷ The Commission is publishing this notice and order to solicit comment on Amendment No. 1 in Sections II and III below, which sections are being published verbatim as filed by the Exchange, and to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.⁸

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its Rules to permit the listing of binary options overlying key performance indicators ("KPIs") reported by certain issuers of stock ("binary KPI options"). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website (https://www.cboe.com/us/options/regulation/rule_filings/cone/), and at the principal office of the Exchange.

2026-061.

⁷ Amendment No. 1 revises the proposal to: (1) correct errors and add clarifying language to the rule text, including with regard to the Exchange's determination of the at-the-money value for new series listing and the availability only to registered market-makers of a proposed position limit exemption; (2) correct errors and provide additional representations and clarifications in the in the description of the proposal, including with regard to the Options Listing Procedures Plan ("OLPP") and the Options Price Reporting Authority ("OPRA") Plan; (3) provide additional description of alternative settlement procedures; (4) provide additional discussion regarding the trading of binary KPI options when trading in the stock of the underlying issuer has been halted; (5) provide additional information regarding how investors may obtain information regarding binary KPI options; and (6) provide a 25,000-contract position limit for binary KPI options. Amendment No. 1 is available at: <https://www.sec.gov/comments/SR-CBOE-2026-061/srcboe2026061-1079659-3751188.pdf>.

⁸ The Commission's discussion and findings begin in Section IV.

III. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rules to permit the listing of binary options overlying key performance indicators (“KPIs”) reported by certain issuers of stock (“binary KPI options”).

By way of background, binary options are based on the same framework as traditional, standardized options traded on the Exchange, except the payout of a binary option is a fixed amount contingent upon the occurrence of the option being in- or at-the-money rather than an amount based on the degree to which the option is in-the-money. As a result, payout at expiration of a binary option is an all-or-nothing occurrence.

Under current Exchange Rules, the Exchange may list binary options on broad-based indexes and the Cboe Magnificent 10 Index.⁹ The Exchange proposes to amend its Rules to permit the listing of binary KPI options. Binary KPI options are European-style, cash-settled options contracts listed on an underlying KPI of an issuer. The exercise settlement value of a binary KPI option is determined not by the market price of the issuer’s stock, but by whether a

⁹ See Chapter 4, Section H.

specific financial or operating metric that is reported by the issuer in an earnings-related filing submitted to the U.S. Securities and Exchange Commission (the “Commission”) meets or exceeds a pre-specified strike level.

First, the Exchange proposes to adopt Chapter 4, Section I (Binary KPI Options) to describe binary KPI options. The Rules in proposed Chapter 4, Section I apply only to binary KPI options. All other Rules apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires.

The Exchange proposes to adopt Rule 4.80 (Definitions). Like other standardized options, binary KPI options have standardized terms that are established by the Exchange. Standardized terms for binary KPI options include the exercise criterion that is the condition or criterion of a binary KPI option, the exercise settlement amount (i.e., payout amount), the strike price, the expiration date, the settlement type as A.M.-settlement or P.M.-settlement, the exercise style (as European-style), and the requirements used to determine if the KPI condition or criterion of a binary KPI option has been met (the “payout determination”¹⁰). The Exchange proposes to establish these terms in new Rule 4.80 and additional provisions related to binary KPI options in proposed Chapter 4, Section I, as described below.

The Exchange proposes to define a “binary KPI option” in new Rule 4.80 as a cash-settled option contract listed on an underlying KPI of an issuer with an exercise settlement amount that is established at the creation of the option and with a settlement value that is determined by whether a specific KPI disclosed by the issuer in an earnings-related filing submitted to the Commission meets or exceeds its exercise price. Binary KPI options are paid out if the reported value of the applicable

¹⁰ This is the term used in the options disclosure document related to binary KPI options (currently pending Commission review) as required by Rule 9b-1 under the Securities Exchange Act of 1934 (the “Act”).

KPI (1) equals or is greater than (i.e., the payout determination) the exercise price for a call binary KPI option or (2) is less than (i.e., the payout determination) the exercise price for a put binary KPI option.¹¹ The Exchange also proposes to provide that unless the context dictates otherwise, the terms underlying security, equity, or index, or any variations of these terms, in the Rules mean issuer KPI for purposes of binary KPI options.¹²

The Exchange proposes to define a “call binary KPI option” as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is at or above the exercise price at expiration (i.e., in- or at-the-money).¹³

The Exchange proposes to define “exercise price” (also referred to as “strike price”) as the value¹⁴ to which the settlement value of the underlying KPI is compared to determine whether the holder of a binary KPI option is entitled to the exercise settlement amount.¹⁵ For binary KPI options, the exercise price is the exercise threshold of an option contract that establishes the number that is compared against the settlement value of the underlying KPI to determine if the cash payout amount (i.e., the exercise settlement amount) will be paid out. In other words, binary

¹¹ This is substantially similar to the definition of binary index option in Rule 4.70.

¹² Similarly, the proposed rule change amends the definition of “underlying security” in Rule 1.1 to provide that the term “underlying security” (or “underlying”) means “with respect to binary KPI options, the applicable issuer KPI that is the subject of the settlement.”

¹³ This is substantially similar to the definition of call binary index option in Rule 4.70.

¹⁴ The value of an exercise price is measured in the applicable units of the KPI (and is scaled, as further discussed below). For example, some KPIs are measured in U.S. dollars while others may be measured in percentages or numbers.

¹⁵ This is substantially similar to the definition of exercise price with respect to binary index options in Rule 4.70. The Exchange proposes to define “exercise settlement amount” for binary KPI options as \$1 (unless otherwise adjusted pursuant to Rules 4.6 or 4.84 or modified pursuant to the Rules of the Clearing Corporation). While the definition of exercise settlement amount for binary index options in Rule 4.70 provides for a range of amounts that the Exchange determines on a class-by-class basis, an exercise settlement amount of \$1 is permissible under that Rule. Specifically, the exercise settlement amount for binary index options equals the exercise settlement value (which must be between \$1 and \$1,000) times the multiplier (which must be at least 1). Therefore, \$1 is currently a permissible exercise settlement amount for binary index options if the Exchange set an exercise settlement value of \$1 and a multiplier of 1.

KPI options will have a threshold number as the exercise price that will be used to determine if the exercise criterion of the binary KPI option has been met, in which case the option will be exercised and holders will receive the cash payout amount (i.e., the exercise settlement amount). For binary KPI options, the exercise threshold will be a number that reflects or is compared to the underlying KPI of the binary option.

The Exchange proposes to define the term KPI (or “key performance indicator”) as a key financial or operating metric disclosed by an issuer in its earnings-related filings submitted to the Commission (i.e., Form 8-K, Form 10-Q, or Form 10-K, as applicable).

The Exchange proposes to define “put binary KPI option” as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is below the exercise price at expiration (i.e., in-the-money).¹⁶

The Exchange proposes to define “settlement value” as the value of the underlying KPI that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money.¹⁷ The proposed definition specifies that the “settlement value” is the value of the applicable KPI as disclosed in the applicable issuer’s earnings-related filing submitted to the Commission on the applicable expiration date (for both A.M.-settled and P.M.-settled binary KPI options).¹⁸ The Exchange designates the applicable KPI and the relevant reporting period (for example, a calendar quarter) at the time of listing a binary KPI option.

¹⁶ This is substantially similar to the definition of put binary index option in Rule 4.70.

¹⁷ This is substantially similar to the definition of settlement value with respect to binary index options in Rule 4.70.

¹⁸ While the timing of an issuer’s official disclosure informs whether the Exchange will establish a binary KPI option as A.M.-settled or P.M.-settled (as further discussed below), the Exchange will use the KPI value included in an issuer’s earnings-related filing submitted to the Commission for the applicable reporting period (and not the press release disclosing earnings results, for example) as the settlement value. The Exchange understands, however, these values are generally the same.

Proposed paragraph (b) of the settlement value definition provides if the applicable KPI is not reported or is otherwise unavailable on the expiration date,¹⁹ settlement (including any payout of the exercise settlement amount) will occur in accordance with the Rules of the Clearing Corporation.²⁰ The alternative settlement procedures of the Clearing Corporation (as further discussed below) provide that if the KPI value needed to determine whether a binary KPI option is at- or in-the-money is not available, expiring contracts will be exercised but may result in delivery of an alternative exercise settlement amount. The alternative exercise settlement amount may be the last closing price of the binary KPI option (i.e., the market valuation of the KPI event), meaning that the alternative exercise settlement amount will be between \$0.01 and \$1.00, rather than the expected \$0.00 or \$1.00. For example, if a KPI will not be reported by the KPI issuer, there is expiring open interest on binary KPI options on that KPI, and the last closing price of the binary KPI option was \$0.76, the alternative settlement procedures of the Clearing Corporation provide that expiring binary KPI options may be exercised and settle at \$0.76 rather than \$1.00. If an option closing price is not available or is deemed by CCUS to be unreliable, the exercise criterion for binary option contracts on that KPI event will be deemed to have not been met, and the binary options will expire unexercised and worthless.

Additionally, proposed paragraph (c) of the settlement value definition states if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the

¹⁹ For example, if an issuer does not report the applicable KPI in its earnings-related filings submitted to the Commission, will not be submitted such a filing for the applicable reporting period, or delays its filing submission to the Commission.

²⁰ The Exchange notes this proposed provision is similar to Rules 4.13(a)(4) and 5.20(e) (which provide that for index options, in various circumstances that may cause values of securities that are components of the index to not be available for calculation of the index at expiration, the values of those securities (and thus the value of the index) will be calculated in accordance with the Rules and By-Laws of the Clearing Corporation). As further discussed below, the Exchange intends to clear binary KPI options through Cboe Clear US, LLC (“CCUS”) and will submit a separate rule filing to update Rules to reflect this. Therefore, references in the proposed Rules and this rule filing to Clearing Corporation mean CCUS.

settlement value (and the exercise settlement amount) of the binary KPI option does not change (as set forth in the Rules of the Clearing Corporation). In other words, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether the KPI is later restated by the issuer.

The Exchange proposes to add Rule 4.81 (Designation of Binary KPI Option Contracts) to identify the binary KPI options that may be listed for trading on the Exchange. Pursuant to proposed Rule 4.81(a), the Exchange may from time to time approve for listing and trading on the Exchange any of the following binary KPI options contracts for the following issuers:

<u>Company</u>	<u>KPI (each financial metric is measured in \$ unless otherwise specified)</u>
<u>Apple, Inc.</u>	<u>Earnings per Share: Diluted</u> <u>Total Net Sales</u> <u>Net Sales by Category: iPhone</u> <u>Net Sales by Category: Services</u> <u>Net Sales by Reportable Segment: Americas</u> <u>Net Sales by Reportable Segment: Greater China</u>
<u>Advanced Micro Devices, Inc.</u>	<u>GAAP Diluted Earnings per Share</u> <u>GAAP Revenue</u> <u>Net Revenue: Data Center Segment</u> <u>Net Revenue: Client and Gaming Segment</u> <u>GAAP Operating Margin (%)</u>
<u>Alphabet Inc.</u>	<u>Diluted net Income per Share</u> <u>Revenues</u> <u>YouTube Ads Revenues</u> <u>Google Cloud Revenues</u>
<u>Amazon.com, Inc.</u>	<u>Diluted Earnings per Share</u>

	<u>Total Net Sales</u> <u>AWS: Net Sales</u> <u>North America: Net Sales</u> <u>International: Net Sales</u> <u>Net Sales: Advertising Services</u>
<u>Bank of America Corporation</u>	<u>Diluted Earnings per Share</u> <u>Total Revenue, Net of Interest Expense</u> <u>Net Interest Income</u> <u>Provision for Credit Losses</u> <u>Net Income</u>
<u>Citigroup Inc.</u>	<u>Diluted Earnings per Share</u> <u>Total Revenue, Net of Interest Expense</u> <u>Net Interest Income</u> <u>Total Provision for Credit Losses</u> <u>Net income</u>
<u>Coinbase Global, Inc.</u>	<u>Net Income per Share – Diluted</u> <u>Total Revenue</u> <u>Transaction Revenue</u> <u>Total Trading Volume</u> <u>Subscription and Services Revenue</u>
<u>Ford Motor Company</u>	<u>GAAP Earnings per Share – Diluted</u> <u>Total Revenues</u> <u>Ford Pro Segment: Revenue</u> <u>Ford Model e Segment: Revenue</u> <u>Ford Blue Segment: Revenue</u>
<u>Intel Corporation</u>	<u>GAAP Earnings per Share Attributable to Intel – Diluted</u> <u>Net Revenue</u> <u>Revenue: Client Computing Group (CCG)</u> <u>Revenue: Data Center and AI (DCAI)</u> <u>Revenue: Intel Foundry</u>

	<u>GAAP Operating Margin (%)</u>
<u>JPMorgan Chase & Co.</u>	<u>Earnings per Share – Diluted</u> <u>Net Revenue – Reported</u> <u>Net Interest Income</u> <u>Provision for Credit Losses</u> <u>Net Income</u>
<u>Marathon Digital Holdings, Inc.</u>	<u>Earnings (Net Loss) per Share of Common Stock – Diluted</u> <u>Revenues</u> <u>Number of Blocks Won (# Bitcoin (BTC))</u> <u>Energized Hashrate (EH) (# EH/s)</u> <u>Total Bitcoin Holdings (# BTC)</u> <u>BTC Produced (# BTC)</u> <u>BTC Purchased (# BTC)</u>
<u>Meta Platforms, Inc.</u>	<u>Earnings per Share: Diluted</u> <u>Revenue</u> <u>Family Daily Active People (DAP) (#)</u> <u>Revenue: Advertising</u> <u>Operating Margin (%)</u>
<u>Microsoft Corporation</u>	<u>Diluted Earnings per Share</u> <u>Revenue</u> <u>Intelligent Cloud: Revenue</u> <u>Microsoft Cloud Revenue</u> <u>More Personal Computing: Revenue</u>
<u>Netflix, Inc.</u>	<u>Earnings per Share: Diluted</u> <u>Revenues</u> <u>United States and Canada (UCAN): Revenue</u> <u>Europe, Middle East, and Africa (EMEA): Revenue</u> <u>Operating Margin (%)</u>
<u>NVIDIA Corporation</u>	<u>GAAP Diluted Earnings per Share</u>

	<u>Revenue</u> <u>Data Center Revenue</u> <u>Edge Computing Revenue</u> <u>Automotive Revenue</u>
<u>Palantir Technologies Inc.</u>	<u>Earnings per Share Attributable to Common Stockholders, Diluted</u> <u>Revenue</u> <u>Net Income</u> <u>Closed Deals of at Least \$1 Million (#)</u>
<u>Robinhood Markets, Inc.</u>	<u>Net Income Attributable to Robinhood Common Stockholders: Diluted</u> <u>Total Net Revenues</u> <u>Funded Customers (#)</u> <u>Average Revenue per User (“ARPU”)</u> <u>Robinhood Gold Subscribers (#)</u>
<u>SoFi Technologies, Inc.</u>	<u>Earnings per Share Attributable to Common Stockholders – Diluted</u> <u>Total Net Revenue</u> <u>Total Net Revenue – Technology Platform</u> <u>Total Net Revenue – Financial Services</u> <u>Total Net Revenue – Lending</u>
<u>Space Exploration Technologies Corp</u>	<u>Earnings per Share: Diluted</u> <u>Total Revenues</u>
<u>Super Micro Computer, Inc.</u>	<u>Net Income per Common Share: Diluted</u> <u>Net Sales</u> <u>Gross Margin (%)</u> <u>Cash Flow Used in Operations</u> <u>Net Income</u>
<u>Target Corporation</u>	<u>Diluted Earnings per Share</u> <u>Net Sales</u> <u>Food & Beverage Net Sales</u>

	<u>Apparel & Accessories Net Sales</u> <u>Operating Income: Rate (%)</u>
<u>Tesla, Inc.</u>	<u>Net Income per Share of Common Stocks</u> <u>Attributable to Common Stockholders: Diluted</u> <u>Total Revenues</u> <u>Total Automotive Revenue</u> <u>Model 3/Y Production (#)</u> <u>Supercharger Connectors (#)</u> <u>Free Cash Flow</u>
<u>The Walt Disney Company</u>	<u>Diluted Earnings per Share</u> <u>Revenues</u> <u>Entertainment Subscription Video on Demand</u> <u>(SVOD) Operating Income</u> <u>Revenues: Experiences</u> <u>Segment Operating Income: Sports</u>

The Exchange proposes to add Rule 4.81(b) to clarify that binary KPI options are a separate class from other options overlying the stock of the issuer²¹ and are a separate class from other binary KPI options with differently underlying KPIs for the same issuer. The Exchange believes this is reasonable given that an individual KPI is the specific underlying of binary KPI options, and generally options with different underlyings (e.g., different underlying security or index) are different option classes.

Next, the Exchange proposes to adopt Rule 4.82 (Terms of Binary KPI Option Contracts) to describe the permissible terms the Exchange may establish for binary KPI option series. Proposed Rule 4.82 provides that binary KPI options listed and traded on the Exchange are designated as to

²¹ This is substantially similar to Rule 4.71(b), which provides that binary index options are a separate class from other options overlying the same index.

expiration date, exercise price, settlement type, exercise style, exercise settlement amount, contract multiplier, and underlying KPI.²² After approving a particular binary KPI option class for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that binary KPI option class. Proposed Rule 4.82(a) states the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled.²³ Binary KPI options for issuers²⁴ that disclose their earnings results before the open of Regular Trading Hours (“RTH”) on a given trading day are designated as A.M.-settled binary KPI options, and binary KPI options for issuers that disclose their earnings results after the close of RTH on a given trading day are designated as P.M.-settled binary KPI options. The Exchange notes that the proposed concepts of A.M.-settlement and P.M.-settlement for binary KPI options differ compared to traditional options (as well as binary index options), for which “P.M.-settled” generally means that the expiration of an option so designated will settle to the closing price of the underlying security or index value and “A.M.-settled” generally means that the expiration of an option so designated will settle to the opening price of the underlying. While different than how these terms apply to standard and binary index options, the Exchange believes the proposed description of A.M.-settlement and P.M.-settlement appropriately reflects the earnings disclosure practices of issuers. Additionally, while the timing of the event that will determine whether the Exchange designates a binary KPI option as A.M.-settled or P.M.-settled is different than that for traditional options and binary index options, the trading hours on expiration dates for each of A.M.-settled and

²² This is substantially similar to Rule 4.72 regarding binary index options.

²³ Binary index options (as well as many traditional index options) that may be listed on the Exchange may be designated A.M.-settled or P.M.-settled.

²⁴ The Exchange determines whether an issuer discloses its earnings results before the open or after the close of RTH on a given trading day based on publicly available information regarding the issuer’s general disclosure practices.

P.M.-settled binary KPI options are consistent with those of A.M.-settled and P.M.-settled index options (traditional and binary) today.

Proposed Rule 4.82(a) further states that the exercise style of binary KPI options is European-style, which is consistent with the rules regarding binary index options.²⁵ A European-style option may only be exercised on its expiration date.²⁶

Proposed Rule 4.82(b) describes permissible expirations for binary KPI options. Specifically, the proposed rule change will permit the Exchange to list binary KPI option series that expire on the date on which an issuer discloses its earnings results (that include the applicable KPI) for the applicable reporting period (such as calendar quarter). The expiration date for a binary KPI option will be the date on which an issuer discloses its earnings results (that include the applicable KPI) for the specified reporting period (such as the date on which an issuer will issue its earnings results press release). The specific expiration date for a binary KPI option series will be finalized when an issuer announces the date on which it will disclose its earnings results (that include the applicable KPI) for that reporting period.²⁷ If that date is a Tuesday, Wednesday, Thursday, or Friday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately prior to that day. If that date is a Monday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately following that Monday. The

²⁵ See Rule 4.72(a).

²⁶ See Rule 1.1 (definition of European-style option).

²⁷ For example, for a binary KPI option series, the Exchange may designate the reporting period for a series to be the fourth quarter of 2026. The expiration date for that series would be the date the applicable issuer establishes as the date it will disclose earnings results for that quarter. In accordance with Rule 1.5(a), the Exchange intends to publish on its public website finalized expiration dates for binary KPI options, as well as update its reference data file for each issuer KPI on which the Exchange lists binary KPI options (as will be described in the Exchange's technical specifications available on its public website), with the specific expiration date for a binary KPI option series once known. The Exchange also plans to provide finalized expiration dates in data files sent to data vendors.

disclosed KPIs relate to a specific time period (such as a month or calendar quarter), which KPIs an issuer publicly discloses on a date following the end of the applicable reporting period.²⁸

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional options and binary index options, the Exchange's proposed designation of expiration dates for binary KPI options will differ to reflect standard issuer disclosure practices. In some instances, an issuer might not establish the specific date on which it will disclose its earnings results for a reporting period until weeks prior to the disclosure date. Consequently, unlike standard equity and index options that have an exact expiration date when strikes are first listed, a binary KPI option will be listed for trading with a placeholder expiration date if the date the KPI information will be released by the issuer is not publicly known. If a placeholder expiration date is required, it will be set as the first trading day following the date of the deadline for the issuer's submission of its earnings-related filing for the reporting period applicable to the series. Once an issuer announces the disclosure date of the KPI information, the expiration date will be updated as the finalized expiration date of the option contract.²⁹ Ultimately, the expiration date for a binary KPI option is the issuer's earnings disclosure date, even if that date is unknown at the time the series is listed.

The Exchange may designate binary KPI option series to expire up to 12 months from the time they are listed and may list up to two expirations at one time for a binary KPI option (per KPI per issuer). The Exchange may open for trading a series of binary KPI options at least one business

²⁸ While earnings results are often reported with respect to the time period covered by the issuer's earnings release, such as a calendar quarter, certain issuers may disclose results for different time periods. For example, it is possible in an earnings release for an issuer to announce a KPI that covers a calendar month rather than a calendar quarter.

²⁹ Issuers have different practices as to when they disclose their earnings results (and when they announce their earnings disclosure dates); however, each issuer's practice is generally consistent and predictable.

week prior to the expiration date of a binary KPI option. The proposed permissible expirations for binary KPI options are similar to current Rules regarding binary index options. First, the proposed rule change permits the Exchange to list binary KPI options to expire up to 12 months from the time they are listed. Current rules regarding binary index options permit these expirations, in addition to expirations out more than 12 months up to 36 months from the time they are listed.³⁰ The proposed rule change also limits the Exchange to list up to two expirations at one time for binary KPI options. Therefore, the proposed scope of permissible expirations for binary KPI options is narrower than that permitted for binary index options under current Rules (as previously approved by the Commission).

The proposal to list expirations at least one business week prior to the expiration date of binary KPI option (as well as the proposed language regarding shifting an expiration date to the business day immediately before or after an expiration date that falls on a day the Exchange is not open for business) is substantially similar to current Exchange Rules applicable to short-term equity options series,³¹ as well as the rules of another options exchange applicable to binary equity options.³² The Exchange believes it is appropriate to permit listing of binary KPI options that expire up to 12 months from the time they are listed to accommodate different issuer reporting periods, as well as to permit the Exchange to list expirations for consecutive calendar quarter periods or for a calendar quarter and annual reporting period at the same time. As discussed above, issuers disclose KPIs in their earnings-related filings submitted to the Commission.

³⁰ See Rule 4.72.

³¹ See Rule 4.5(d).

³² See NYSE American, LLC Section 17, Rule 903ByRDs.

Proposed Rule 4.82(c) describes the permissible exercise prices (or strike prices) the Exchange may designate for binary KPI option series. Proposed Rule 4.82(c)(1) describes how the value of exercise prices of binary KPI option series are measured. Specifically, the exercise price of each binary KPI option series will be a fixed amount equal to an underlying KPI value. Because the value of certain KPIs may be very large (e.g., billions of dollars), the Exchange proposes that the exercise price for a binary KPI option will be the underlying KPI divided by a scaling factor based on the value of the KPI in the issuer's most recent earnings-related filings submitted to the Commission as of the time a binary KPI option class is listed as follows:

- If the most recently disclosed KPI value is greater than or equal to one trillion, the exercise price equals that value divided by one trillion (e.g., for such KPIs, an exercise price of 27.00 is equivalent to a KPI value of 27,000,000,000,000.00);
- If the most recently disclosed KPI value is greater than or equal to one billion but less than one trillion, the exercise price equals that value divided by one billion (e.g., for such KPIs, an exercise price of 112.00 is equivalent to a KPI value of 112,000,000,000.00);
- If the most recently disclosed KPI value is greater than or equal to one million but less than one billion, the exercise price equals that value divided by one million (e.g., for such KPIs, an exercise price of 900.00 is equivalent to a KPI value of 900,000,000.00);
- If the most recently disclosed KPI value is greater than or equal to one thousand but less than one million, the exercise price equals that value divided by one thousand (e.g., for such KPIs, an exercise price of 42.00 is equivalent to a KPI value of 42,000.00); and

- If the most recently disclosed KPI value is less than one thousand, the exercise price equals that value and is not divided by a scaling factor (e.g., for such KPIs, an exercise price of 774.00 is equivalent to a KPI value of 774.00).³³

The Exchange will apply a different scaling factor to newly listed binary KPI option series for a new expiration only after the value of the KPI in the issuer's earnings-related submitted to the Commission has a value in a different scaling tier for four consecutive reporting periods or if the Exchange deems it necessary in the interests of a fair and orderly market. Application of a different scaling factor will not affect the exercise prices of any series of the binary KPI options previously opened. For example, if the Exchange begins listing a new class of binary KPI options and the most recently disclosed KPI value for the issuer at the time of that listing was for the third quarter of 2026 and was \$892,000, the exercise prices for that class of binary KPI options will be scaled by 1,000, and thus exercise prices of 895, 995, and 1005, would represent \$895,000, \$995,000, and \$1,005,000, respectively. If the issuer discloses a KPI value of \$1,020,000 in its fourth quarter 2026 earnings disclosure, the Exchange will continue to list exercise prices scaled by 1,000. If the issuer then discloses KPI values of \$1,112,000, \$1,237,000, and \$1,064,000 for the first, second, and third quarters, respectively, of 2027, the Exchange will begin scaling the exercise prices by 1,000,000 for the fourth quarter 2027 expirations (or for the first quarter 2028 expirations if the Exchange had already listed fourth quarter 2027 expirations prior to the disclosure of the third quarter 2027 KPI value). The Exchange believes this will permit consistency for listing scaled KPI values while allowing the Exchange to update strike prices to reflect long-term changes to an issuer's KPI values.

³³ When applying the scaling factor, the Exchange will not round the scaled KPI value and instead will truncate the value to fit the scaled strike price value within standard strike listing format.

The Exchange will announce in accordance with Rule 1.5 if the scaling factor applied to a binary KPI options changes (for example, the KPIs will be scaled in billions rather than in millions), including through updates to the Exchange's technical specifications regarding binary KPI options and reference data files that describe the terms of binary KPI options, which will be available on the Exchange's website (customers receive notifications of such updates). This is consistent with how the Exchange provides information regarding product information (including updates) for all options the Exchange lists for trading.³⁴

It is possible for a KPI to have a negative value, such as earnings per share (which is equivalent to a loss per share). Proposed Rule 4.82(c)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values. For these series, the exercise price will equal the absolute value of the KPI and will be scaled as described above. For example, if an issuer's earnings per share in the last reporting period was -\$3.52 (and thus was a loss per share), a binary KPI option for such issuer with a strike of 3.58 will reflect an expected loss of \$3.58 per share. The Exchange will incorporate into symbology for binary KPI options whether the value of the strike price is positive or negative, including if the Exchange lists binary KPI option series with both positive and negative strike prices. This is similar to current Exchange practice for index options for which the Exchange lists both A.M.-settled and P.M.-settled series — whether a series is A.M.- or P.M.-settled is built into the symbol, each of which could have the same strike prices listed at the same time. Whether a symbol reflects a positive or negative value will be available on contract specifications as well as the reference data file for the specific binary KPI option on the Exchange's public website (in accordance with Rule 1.5).

³⁴ The binary KPI option contract specifications available on the Exchange's public website will set forth the scaling factor for each binary KPI option.

Proposed Rule 4.82(c)(2) provides the minimum interval between strike prices for binary KPI options series is:

- 0.01 where the strike price is less than 10;
- 0.10 where the strike price is 10 or greater but less than 100;
- 1.00 where the strike price is 100 or greater but less than 1,000;
- 10.00 where the strike price is 1,000 or greater but less than 10,000; and
- 100.00 where the strike price is 10,000 or greater.

As discussed above, while KPI values above 1,000 are generally scaled, there may be circumstances in which the Exchange lists strikes above 1,000 or even 10,000 given the Exchange's proposal to maintain a lower scale level until a KPI value is consistently above a certain level (e.g., above one billion for four consecutive quarters). This may occur when a KPI value is near the top of a scaling range; for continuity, the Exchange will continue listing strike prices using the lower scaling factor and not change to a higher scaling factor until the KPI value is regularly within that higher range (as noted above). Suppose a KPI value is 995,000,000; in this case, strike prices will be scaled by 1,000,000. Thus, the Exchange may list binary KPI options above and below 995 (995,000,000 divided by 1,000,000). However, it is realistic that the KPI may increase to above 1,000,000,000. As proposed, the Exchange may list strike prices, for example, of 1,000 (representing 1,000,000,000) and above, for expirations until the KPI value is above 1,000,000,000 for four consecutive reporting periods. To reduce confusion, the Exchange would not scale strike prices using different scaling factors within a single expiration (and would not change the scale until the KPI value is consistently at the higher level). Therefore, it is possible the Exchange may list strikes greater than 1,000. Similarly, while strikes above 10,000 may be rare, given the Exchange proposes to maintain a lower scale level until a KPI value is consistently above a certain level (e.g.,

above one billion for four consecutive quarters, as proposed), depending on market factors and demand, it is possible (although unlikely) the Exchange may determine it is appropriate to list strikes above 10,000 if market factors or expectations signify a significant increase of the KPI value. The proposed strike intervals accommodate the listing of binary KPI options in these circumstances before the Exchange shifts the strike prices for an issuer's KPI to a different scaling level.

The proposed strike intervals are generally consistent with current Rules for other options, which provide for larger strike intervals as the values of strike prices increase. Given the scaling factors for larger KPI values, it may appear the proposed rule change will permit smaller strike intervals for larger KPI values if those intervals are considered solely on a nominal basis. However, that is not the case if the actual values of the strike intervals are considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. For example, suppose a strike price of 950 represents \$950 million. The proposed rule change would permit strike intervals of \$1.00. However, that \$1.00 corresponds to \$1,000,000. In other words, if the Exchange listed strikes of 950, 951, and 952, the difference in the actual value between those strikes is \$1,000,000, not \$1 (i.e., the strikes represent values of \$950,000,000, \$951,000,000, and \$952,000,000). Similarly, suppose a strike price of 3 represents \$3,000,000,000. The proposed rule change would permit strike intervals of \$0.01. However, in this case, that \$0.01 corresponds to \$10,000,000. If the Exchange listed strikes of 3.00, 3.01, and 3.02, the difference in the actual value between those strikes is \$10,000,000, not \$0.01 (i.e., the strikes represent values of \$3,000,000,000, \$3,010,000,000, and \$3,020,000,000, respectively). As a result, the permissible strike intervals between strike prices representing values in the billions are actually larger than the permissible strike intervals between strike prices representing values in the millions. This is consistent with the

general premise underlying current strike intervals that larger strike intervals apply to larger strike values.

Proposed Rule 4.82(d) describes the initial series of a binary KPI option the Exchange may open for trading. Specifically, the Exchange may open for trading one or more binary KPI option series with a fixed KPI value as the strike price (scaled as described above), with approximately the same number of strike prices being opened above and below the at-the-money KPI value at the time the binary KPI option series are opened. The “at-the-money” KPI value may be the value of the KPI in the issuer’s most recent earnings-related filing submitted to the Commission, the issuer’s disclosed estimate of the KPI for the next reporting period, or analysts’ consensus estimate as reported by major market vendors, as the Exchange deems appropriate based on the most recent market information available to the Exchange. Because KPIs are static values, the Exchange believes it is appropriate to determine strike prices based on all available information that would inform expectations about the KPIs (as investors would do). The Exchange understands that an issuer’s previously disclosed KPI, as well as issuer and analyst estimates of the KPI, are primary factors investors may consider when determining in which direction the KPI value may move in the next reporting period (similar to how investors consider the then-current price of an underlying stock when considering their options investment strategies and which direction the stock price may move). Therefore, the Exchange believes using the most recently available of these values is appropriate to use for determining which strikes it should list for a specific issuer KPI. The Exchange believes this flexibility to select the most appropriate at-the-money value is similar to current rules that permit the Exchange to list additional series to maintain an orderly market, to meet customer demand, or when the market price of the underlying security moves

substantially.³⁵ The Exchange believes the proposed definition of at-the-money will allow the Exchange to list series with strike prices that are consistent with investor expectations and demands and that are based on information available in the market.

The Exchange will list strike prices for binary KPI option series that are reasonably close to the at-the-money KPI value at the time of listing. A strike is “reasonably close” to the at-the-money KPI value if (1) for KPIs less than or equal to 1, it is no more than 2³⁶; (2) for KPIs greater than 1 and less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (3) for KPIs greater than 10, it is no more than 30% above or below the at-the-money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) if demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.³⁷

The Exchange may add new binary KPI option series when the Exchange deems it necessary to maintain a fair and orderly market or to meet customer demand, and the opening of a new series of binary KPI options on the Exchange will not affect any other series of options of the same binary KPI option class previously opened.³⁸ The Exchange may list additional series using

³⁵ See, e.g., Rule 4.5(d)(4).

³⁶ The Exchange believes this is appropriate given the potentially small values of certain KPIs. For example, suppose the second quarter earnings per share of a company was \$0.04. In such a case, if strikes were limited to 100% above this value, the Exchange could only list strikes up to \$0.08, which would provide investors with minimal investment options. Therefore, the Exchange believes this provision is appropriate to provide the Exchange with authority to list meaningful strikes for smaller-valued KPIs.

³⁷ See, e.g., Rule 4.5(d)(3) and (4) (permissible series for short term equity option series). It is currently uncommon for the Exchange to list series more than 50% away from the at-the-money value of an underlying security for strikes above 20, as permitted by Rule 4.5(d)(3).

³⁸ Rule 4.72(c) also provides that additional series of a binary index option may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market or to meet customer demand, and that the opening of a new series of binary index option on the Exchange will not affect any other series of options of the same class previously opened.

updated at-the-money KPI values, such as if the Exchange lists binary KPI options series for an expiration before the applicable issuer has disclosed the KPI value in a filing submitted to the Commission for the immediately preceding reporting period and that value is then disclosed in a filing submitted to the Commission or if the issuer or major market data vendors publish estimates of the KPI value. For example, before expiration of a binary KPI option series set to expire on the date of an issuer's disclosure of its third quarter earnings results, the Exchange lists series of that binary KPI option to expire on the date of an issuer's disclosure of its fourth quarter earnings results (using the KPI from the issuer's second quarter earnings results as the at-the-money KPI value). After the issuer discloses its third quarter earnings results in a filing submitted to the Commission, including the applicable KPI, the Exchange may list additional series for the fourth quarter binary KPI options using the third quarter KPI result as the at-the-money KPI value. Suppose, further, that after the issuer discloses its third quarter earnings results, the issuer publishes an estimate of the fourth quarter KPI value. As investors may see this estimate (and possibly factor it into their investment decisions), the Exchange may determine it is appropriate to consider this estimate the "at-the-money" value and list additional strikes above and below this value. Any additional strike prices the Exchange lists will be reasonably close (as defined above) to the at-the-money KPI value at the time of listing.

Continuing the above example, suppose the Exchange lists binary KPI options for the fourth quarter before the binary KPI options for the third quarter have expired. As proposed, the Exchange would list strikes above and below the at-the-money strike, which at the time of listing may be the settlement value KPI from the issuer's second quarter earnings results disclosure (the most recently available KPI). If the KPI for the option was net sales, and the second quarter value was \$45.093 billion, the at-the-money strike would be 45.10, and the Exchange could list

strikes within 30% of that value, and additional series based on customer demand or market changes. After the Exchange lists those series, the issuer discloses its third quarter earnings results, including net sales of \$57.241 billion. As proposed, after that disclosure, the Exchange may list additional strikes within 30% of \$57.24 to reflect the change in value of the underlying (as well as additional series based on customer demand or market changes).

This proposed framework for listing and adding series is similar to the framework in current Rules for listing and adding series of equity options.³⁹ While the proposed strike intervals are narrower than these rules, the permissible ranges are also narrower. The Exchange acknowledges the proposed framework would permit the Exchange to list many strikes per KPI per expiration. However, the Exchange intends to apply its standard strike listing practices to binary KPI options. Specifically, the Exchange generally lists strikes at wider intervals as they move farther away from the at-the-money value, while listing more granular intervals for strikes closer to the at-the-money value. The Exchange also generally delists granular strikes that are deep out-of-the-money if the Exchange determines they are sufficiently covered by wider strike intervals that are close in value.

These proposed provisions regarding the listing of binary KPI option series are similar to provisions regarding permissible series of other options. The Exchange believes it is reasonable to list binary KPI options for a new reporting period prior to the expiration of then-listed binary KPI options for the immediately preceding reporting period (e.g., listing binary KPI options for the fourth quarter before expiration of binary KPI options for the third quarter), and thus before the settlement value of the applicable KPI is known for the immediately preceding reporting period for these options, to permit investors to roll positions from one expiration to the next. As

³⁹ See, e.g., Rule 4.5(d)(3) and (4).

proposed, once the settlement value for the immediately preceding reporting period is known (the third quarter in this example), the Exchange may list additional series of the binary KPI options that reflect that KPI value. This is consistent with current practice if there is a change (including a substantial change) in the price of an underlying security or value of an underlying index. For example, Rule 4.5(d)(4) permits the Exchange to open additional series of a short-term option series overlying a security when the market price of the underlying security moves away from the exercise price or prices of the series already opened, subject to the “reasonably close” parameters set forth in that Rule. Disclosure of, as an example, the third quarter KPI value after the fourth quarter binary KPI options series were listed based on the second quarter KPI value (if the third quarter KPI value differs from the second quarter KPI value) is similar to a move in the price of an underlying security, which may result in the Exchange listing additional series based on the updated price of the underlying security. Similarly consistent with current practice for other options (as set forth in Rule 4.5(d)(4), for example), opening of binary KPI options based on this later-disclosed KPI value will not affect any other series of options of the same binary KPI options class previously opened.

Proposed Rule 4.82(g) provides that the contract multiplier for each class of binary KPI options is one.⁴⁰

The Exchange proposes to add new Rule 4.83 (Determination of Settlement Value) to establish that binary KPI options that are “at-the-money,” “in-the-money,” or “out-of-the-money” are a function of the settlement value of the underlying issuer KPI in relation to the type of binary

⁴⁰ While the definition of contract multiplier for binary index options in Rule 4.70 permits the Exchange to designate a multiplier (which must be at least one), the proposed fixed multiplier of one for binary KPI options is currently permissible for binary index options under that Rule.

KPI option (i.e., put or call) and the exercise price.⁴¹ As described above, the settlement value for a binary KPI option is the value of the KPI for the applicable reporting period as disclosed in the applicable issuer's earnings-related filing submitted to the Commission. While the Exchange factors the timing of an issuer's disclosure of a KPI value into the determination of whether the Exchange lists a binary KPI option as A.M.-settled or P.M.-settled, the Exchange will source the settlement value from the earnings-related filing for the applicable reporting period that the issuer submits to the Commission. Generally, companies issue press releases that contain earnings results and near contemporaneously submit a Form 8-K to the Commission with the press release as an exhibit. Therefore, it is unlikely the value of the KPI in the Commission filing will differ from the value in the initial disclosure; however, the value in the Commission filing will be the ultimate settlement value.

Proposed Rule 4.84 (Adjustment) provides that binary KPI option contracts are subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any adjustment has been made pursuant to proposed Rule 4.84 (and the Rules of the Clearing Corporation), the Exchange will announce this adjustment, which will become effective as of the time specified in that announcement.⁴²

Next, the Exchange proposes to add new Rule 5.1(b)(3)(F), which says RTH for binary KPI options are from 9:30 A.M. to 4:00 P.M.⁴³ Further, the last day of trading for P.M.-settled binary KPI options is the day of expiration, and the last day of trading for A.M.-settled binary KPI options is the trading day prior to expiration.

⁴¹ This is substantially similar to Rule 4.73 regarding binary index options.

⁴² This is substantially similar to Rule 4.74 regarding binary index options. This is also consistent with how adjustments are handled for traditional equity and index options.

⁴³ As set forth in Rule 1.6, unless otherwise specified, all times in the Rules (including the proposed Rules) are Eastern Time.

The Exchange recognizes it is possible, although unusual and unlikely, that an issuer's KPI information may become available at unexpected times. Proposed Rules 5.1(b)(3)(F)(iii) and (iv) address the impact on trading and expiration that such disclosure may have. First, the proposed rule change provides if the Exchange confirms an issuer discloses the KPI prior to the expiration date (i.e., the date on which the issuer had announced it would disclose its earnings results for the applicable reporting period), trading in the applicable binary KPI options series will cease, and the expiration date for the option accelerates to a date on or shortly after the date of that disclosure in accordance with the Rules of the Clearing Corporation.⁴⁴ This may occur if, for example, the applicable issuer releases the KPI information in advance of the expiration date of the option. If the issuer releases KPI information after the expiration date, which may be the case if, for example, the issuer's disclosure of its earnings is delayed, trading in the option will not be impacted and will cease as of the expiration date. While the expiration date will not change, expiration and settlement processing of such options will be delayed until the KPI information becomes available, in accordance with the Rules of the Clearing Corporation. Additionally, the proposed rule change provides if there is an unofficial disclosure⁴⁵ of the KPI prior to the expiration date, the Exchange may determine to halt (and resume) trading in the applicable binary KPI options series in accordance with Rule 5.20. In certain circumstances, the expiration date for the option may accelerate in accordance with the Rules of the Clearing Corporation; if this occurs, trading in the binary KPI will cease.⁴⁶ This proposed provision addresses the unlikely event that KPI

⁴⁴ The proposed acceleration of binary KPI options is similar to the existing acceleration process for equity options when the underlying security of such options has been converted entirely to cash. See OCC Rule 807.

⁴⁵ Unofficial disclosure of a KPI may include, for example, an unsanctioned leak of the KPI or disclosure of the KPI by a source other than the issuer.

⁴⁶ Rule 5.20(a) provides that any two Floor Officials, in consultation with a designated senior executive

information becomes available through sources other than the issuer in advance of the expiration date. If the Exchange determines the KPI information reported from the unofficial source is unreliable, trading in the binary KPI option may resume until it expires.

The Exchange proposes to add new Rule 5.3(c), which states that, notwithstanding Rule 5.3(a), bids and offers for a binary option with a multiplier other than 100 must be expressed in terms of dollars per 1/multiplier of the total value of the contract.⁴⁷ For example, if a binary option has a multiplier of 1, an offer of “0.50” represents an offer of \$0.50.

Pursuant to Rule 5.4(c)(1), the Exchange establishes the minimum increment for bids and offers on orders for binary options on a class-by-class basis, which may not be less than \$0.01. The Exchange proposes to clarify that this Rule applies to binary index options (which the Exchange may list pursuant to current Rules) and would apply to binary KPI options as proposed in this rule filing.

The Exchange proposes to add Rule 5.31(d)(1)(D), which provides that for binary KPI options, the System initiates the opening rotation at 9:30 A.M. This is analogous to the opening process currently in place for VIX options, for which the opening rotation is similarly triggered at a specified time.⁴⁸

The Exchange proposes to adopt a maximum execution price protection mechanism for binary options.⁴⁹ Specifically, proposed Rule 5.34(d) permits the Exchange to apply a maximum

officer of the Exchange, may halt trading in any security in the interests of a fair and orderly market and to protect investors considering relevant factors.

⁴⁷ The Exchange notes this would apply to all binary options, not just binary KPI options, as Rule 4.70 permits binary options to have multipliers of at least one.

⁴⁸ See Rule 5.31(d)(1)(C).

⁴⁹ The Exchange notes this would apply to all binary options, including both binary index options and binary KPI options.

execution price protection for binary options on a class basis, pursuant to which the System adjusts any execution price for a binary option above the Exchange-designated maximum execution price for that class down to that maximum execution price. For example, suppose the Exchange designates \$1.03 as the maximum execution price for a binary KPI option class. If the System observes a binary KPI option execution in that class at \$1.10, the System adjusts the execution price to \$1.03. Binary options have a maximum value equivalent to the exercise settlement amount (i.e., the cash payout amount). Therefore, the Exchange believes it is reasonable to prevent executions from occurring at prices significantly above that maximum value, as it protects investors from execution prices that are potentially erroneous.

While binary options have a maximum intrinsic value (e.g., binary KPI options have a maximum intrinsic value of \$1, which is the exercise settlement amount), there are costs involved with options trading that may cause investors to execute these options at prices higher than that value. Suppose a customer wants to buy a binary option that is close to expiration and is deep in-the-money. While the intrinsic value of this binary option is \$1, and likely to pay out \$1, a Market-Maker would need to receive more than \$1 to accommodate the sale of this binary option to cover additional trading expenses, such as transaction and clearing fees. Therefore, the Exchange believes allowing execution prices above the intrinsic value is appropriate.

The Exchange proposes to add Rule 6.5, Interpretation and Policy .10, which provides that Rule 6.5 does not apply to binary KPI options. While the obvious error provisions set forth in Rule 6.5 will not be applicable to binary KPI options, the Exchange believes the proposed maximum execution price protection in Rule 5.34(d) may prevent executions at potentially erroneous prices, obviating the need for an obvious error process for binary KPI options.⁵⁰

⁵⁰ The proposed rule change also deletes an extra space from Rule 6.5, Interpretation and Policy .04.

The Exchange proposes to amend Rule 6.20(g) (Exercise of Options Contracts) to describe the automatic exercise feature of binary KPI options. Current Rule 6.20(g) describes the automatic exercise of binary index options. The proposed rule change moves the current provision to proposed subparagraph (g)(1) (and clarifies it applies to binary index options). The proposed rule change then adds a similar provision for binary KPI options as Rule 6.20(g)(2), which states that binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price of a put binary KPI option.⁵¹

The Exchange proposes to amend Rule 8.36 (Position Limits for Binary Options) to set forth position limit requirements for binary KPI options.⁵² The Exchange proposes to adopt Rule 8.36(a)(iii) to provide that in determining compliance with Rule 8.30 (Position Limits), the position limit for binary KPI options is 25,000 standard option contracts per expiration and 100 binary KPI option contracts equal one standard option contract.⁵³

The Exchange also proposes to amend current Rule 8.36(c) (proposed Rule 8.36(b)), which currently states that positions in binary index options on the same index that have different exercise settlement amounts are aggregated. The Exchange proposes to amend the rule to clarify that this provision applies to binary index options (as proposed Rule 8.36(b)(1)). Further, the

⁵¹ The proposed rule change also makes a nonsubstantive change to Rule 6.20(g)(1) to conform language with proposed subparagraph (g)(2).

⁵² As part of the proposed change, the Exchange proposes to clarify that current fixed position limit provisions in proposed Rule 8.36(a)(1) (current Rule 8.36(a)) and the formulaic position limit provisions in proposed Rule 8.36(a)(2) (current Rule 8.36(b)) apply to binary index options. The proposed rule change also updates the paragraph lettering for current Rules 8.36(c) through (f) to reflect revised paragraph lettering.

⁵³ This is similar to other Rules regarding how positions in contracts with multipliers other than 100 are counted for purposes of determining compliance with Rule 8.30. See, e.g., Rule 8.30, Interpretation and Policy .08 (regarding mini-option contracts, which have a multiplier of 10).

Exchange proposes to adopt Rule 8.36(b)(2) to provide that positions in binary KPI options on the same KPI that have different expiration dates are not aggregated (as proposed position limits are calculated per expiration), and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated (as binary KPI options overlying different KPIs, even for the same issuer, are different classes, as discussed above).

The Exchange proposes to amend current Rule 8.36(d) (proposed Rule 8.36(c)) relating to the aggregation of binary options positions with non-binary option contracts for purposes of position limits. The Exchange proposes to clarify that the current provision (as proposed Rule 8.36(c)(1)) applies to binary index options. The Exchange proposes to adopt Rule 8.36(c)(2) to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Finally, the Exchange proposes to amend the hedge exemption provision in current Rule 8.36(f) (proposed Rule 8.36(e)).⁵⁴ As proposed, with respect to binary KPI options, a binary KPI option short put position coupled with a binary KPI option short call position held by a Market Maker, regardless of the binary KPI option strike, will be exempt from the established position limits as prescribed in Rule 8.36. Given the retail nature of binary KPI options, the Exchange expects investors to primarily buy binary KPI options. Liquidity providers, as a result, may amass short positions to facilitate investors' purchases of binary KPI positions. The proposed hedge exemption is intended to exclude offsetting pairs of these short positions from counting towards position limits so that such position limits do not restrict liquidity providers' ability to provide liquidity in the market. Traditional hedge exemptions set

⁵⁴ As per current Rule 8.36(f), binary options are not subject to the hedge exemption to the standard position limits found in Rule 8.30. As part of the proposed rule change, the Exchange proposes to clarify current hedge exemption provisions specific to binary index options and to move provisions specific to binary index options to Rule 8.36(e)(1). The Exchange proposes to renumber current Rule 8.36(f)(1), (2), and (3) as Rule 8.36(f)(1)(A), (B), and (C), respectively.

forth in Rule 8.30, Interpretation and Policy .04 (Equity Hedge Exemptions), upon which Market-Makers may rely for equity options, are inapplicable to the proposed binary KPI options. For example, under Rule 8.30, Interpretation and Policy .04(a)(2), a long call position accompanied by a short put position, where the long call expires with the short put, and the strike price of the long call and short put is equal, and where each long call and short put position is hedged with 100 shares are exempt from position limits. The Exchange proposes a hedge exemption specific to binary KPI options. The Exchange believes that exempting offsetting short binary KPI option will provide liquidity providers with an opportunity to exempt their hedge positions from position limits in a similar manner as they can for equity options pursuant to current Rules.

The Exchange lastly proposes to amend Rule 8.43 (Reports Related to Position Limits). Current Rule 8.43(a) states that in a manner and form prescribed by the Exchange, each Trading Permit Holder (“TPH”) shall report to the Exchange, the name, address, and social security or tax identification number of any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange. The Exchange proposes to amend Rule 8.43(f) to provide that for purposes of this report, 100 binary KPI option contracts equal one standard option contract.⁵⁵ The Exchange believes this is

⁵⁵ The Exchange also proposes to amend the paragraph heading so that it applies to all binary options rather than just binary index options, as well as to amend one of the provisions to apply to all binary options rather than just index options (the other provisions are specific to binary index options and remain unchanged).

reasonable given that binary KPI options have a multiplier of 1 while standard equity option contracts have a multiplier of 100.⁵⁶

Except as otherwise described above, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner to standard equity and index options and binary index options may be listed and traded under current Rules. The Rules that apply to the listing and trading of non-binary options on the Exchange, including those related to customer accounts, margin requirements (pursuant to current margin rules, binary KPI options will be fully funded),⁵⁷ and trading halt procedures,⁵⁸ which are designed to prevent fraudulent and manipulative acts and practices, will apply to the listing and trading of binary KPI options. The Exchange has analyzed its capacity and represents that it believes it has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

At launch, binary KPI options will be supported for electronic trading only and for complex orders⁵⁹; FLEX and floor trading will not be available. The Exchange will support Automated Improvement Mechanism (“AIM”) and Complex-AIM (“C-AIM”) auctions as well as Complex Order Auctions (“COA”) for binary KPI options at launch.⁶⁰ The Exchange will not

⁵⁶ This is consistent with the proposed rule change discussed above that 100 binary KPI option contracts equal one standard option contract for purposes of determining compliance with Rule 8.30.

⁵⁷ See Rule 10.3(m).

⁵⁸ Binary KPI options will not be automatically tied to the trading state of the underlying issuer stock, and, thus, trading in binary KPI options may not be affected by halts in the underlying issuer stock. The binary KPI options will halt in accordance with current Rules, including Rules 5.20 and 5.22.

⁵⁹ Complex order functionality will apply to binary KPI options in the same manner as all other options that trade on the Exchange, as described in Rule 5.33 (this will include the ability to leg into the simple book).

⁶⁰ As per current Rules, the Exchange may designate binary KPI options eligible for additional auction types in the future. See, e.g., Rule 5.39 (Solicitation Auction Mechanism (“SAM” or “SAM Auction”)), Rule 5.40 (Complex Solicitation Auction Mechanism (“C-SAM” or “C-SAM Auction”)), and Rule 5.35 (Step Up Mechanism (“SUM”)). The Exchange may also determine in the future to deactivate any auction functionality for binary KPI options in accordance with Rules regarding the auctions.

apply Preferred Market-Maker (“PMM”), Designated Primary Market-Maker (“DPM”), or small-size order entitlement overlays at launch.⁶¹

With respect to order types and times-in-force, at launch, the Exchange will support limit orders⁶² with Time-in-Force of Day or Immediate-or-Cancel (“IOC”). With respect to order instructions,⁶³ the Exchange will support the following at launch: Attributable and Non-Attributable; Book Only; Cancel Back; orders marked with Match Trade Prevention identifiers (“MTPs”) Cancel Newest (“MCN”), MTP Cancel Oldest (“MCO”), MTP Decrement and Cancel (“MDC”), MTP Cancel Both (“MCB”), MTP Cancel Smallest (“MCS”); Minimum Quantity; Post Only;⁶⁴ Price Adjust; Reserve; and Stop-Limit. All other order types, order instructions, or times-in-force will not be supported at launch; however, according to current Rule 5.6, the Exchange may determine to support additional order types, order instructions, or times-in-force on a class-by-class basis for binary KPI options. Consistent with current practice, if the Exchange modifies the applicability of any functionality or order instructions for binary KPI options, it will notify TPHs in accordance with Rule 1.5(a) (such as by Exchange notice).

The Exchange will send quotation and transaction price information for binary KPI options to The Options Price Reporting Authority (“OPRA”) in the same manner it sends this

⁶¹ See Rule 5.32(a)(2). Pursuant to that Rule, the Exchange may determine in the future to apply any of these priority overlays to binary KPI options. Market-Makers for binary KPI options will be subject to obligations set forth in Rules 5.51 and 5.52, including electronic continuous quoting obligations in Rule 5.52(d)(2).

⁶² See Rule 5.6(b) for definition of “limit order.”

⁶³ See Rule 5.6(c) for definitions of order instructions.

⁶⁴ The Exchange intends to make the Post Only instruction available as it understands Market-Makers use this instruction on their quotes to prevent those quotes from trading against resting interest (Rule 5.5(c)(3)(A) requires quotes (*i.e.*, bulk messages) to be designated as Post Only or Book Only). Market-Makers generally send quote updates regularly and frequently, as their quoting systems update quotes to reflect market factors. The Post Only instruction eliminates the risk that one Market-Maker’s quote update would execute against, for example, another Market-Maker’s quote update that another Market-Maker may have sent but has not yet reached the Book. The Post Only instruction ultimately supports Market-Maker’s primary function, which is to add liquidity to the Book.

information to OPRA for all other options the Exchange lists. Additionally, the Exchange understands from OPRA that it will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists. The Exchange intends to follow OPRA's standard capacity monitoring process for binary KPI options (in accordance with OPRA instructions), which includes submission of quarterly capacity projections (the Exchange will include its projected binary KPI option volume in the applicable submission). Further, the Exchange understands from OPRA that no technical changes are required to accommodate the reporting to OPRA of quotation and transaction information regarding binary KPI options (the Exchange represents, if later required by OPRA, it will adhere to any new technical requirements OPRA deems necessary to accommodate binary KPI options).⁶⁵ The Exchange does not believe TPHs will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary KPI options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange's automated system.

Certain provisions of the OPRA Plan regarding voting if there is a tie in a Management Committee vote, as well as the allocation of costs and resources, relate specifically to volume cleared at The Options Clearing Corporation (the "OCC"). The Exchange will take steps necessary and within its authority to propose amendments to these provisions of the OPRA Plan to reflect all listed options volume cleared by any registered clearing agency, including volume that will be cleared by CCUS (as discussed below). If an amendment to the OPRA Plan to revise these provisions is not effective before the Exchange begins listing binary KPI options, the

⁶⁵ The Exchange understands OPRA may need to update how it disseminates open interest information for binary KPI options, as its current process incorporates information from OCC. The Exchange and CCUS are working with OPRA to implement a process to provide OPRA with binary KPI option open interest so OPRA may incorporate it into its dissemination process.

Exchange will be responsible for additional costs associated with any additional OPRA capacity the Exchange may need as a result of the listing and trading of binary KPI options but will receive no additional OPRA revenue for binary KPI options trades.⁶⁶

Today, the Exchange has an adequate surveillance program in place for options. The Exchange intends to apply the same program procedures to binary KPI options the Exchange applies to its other options products. Additionally, the Exchange is a member of the Intermarket Surveillance Group (“ISG”) under the Intermarket Surveillance Group Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (“FINRA”) for certain market surveillance, investigation and examinations functions. Pursuant to a multi-party 17d-2 joint plan, all options exchanges allocate amongst themselves and FINRA responsibilities to conduct certain options-related market surveillance that are common to rules of all options exchanges.⁶⁷ All options exchanges are also parties to the Options Regulatory Surveillance Authority plan under Regulation NMS Rule 608, pursuant to which FINRA conducts options-related insider

⁶⁶ See Limited Liability Company Agreement of Options Price Reporting Authority, LLC, Section 7.1(a) (which provides that OPRA costs accrued in a single calendar year above a ceiling are allocated in accordance with guidelines regarding capacity planning, which guidelines allocate OPRA costs above the annual ceiling on the basis of a party’s share of message capacity (which would include binary KPI options without an OPRA Plan amendment) and thus is unrelated to number of trades reported by OCC); and Sections 7.1(a)(iv) and (b)(ii) (which provides that OPRA revenues are allocated based on compared trades as reported by OCC, which would exclude binary KPI option trades without an OPRA Plan amendment).

⁶⁷ Section 19(g)(1) of the Act, among other things, requires every self-regulatory organization (“SRO”) registered as a national securities exchange or national securities association to comply with the Act, the rules and regulations thereunder, and the SRO’s own rules, and, absent reasonable justification or excuse, enforce compliance by its members and persons associated with its members. See 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2. Section 17(d)(1) of the Act allows the Commission to relieve an SRO of certain responsibilities with respect to members of the SRO who are also members of another SRO (“common members”). Specifically, Section 17(d)(1) allows the Commission to relieve an SRO of its responsibilities to: (i) receive regulatory reports from such members; (ii) examine such members for compliance with the Act and the rules and regulations thereunder, and the rules of the SRO; or (iii) carry out other specified regulatory responsibilities with respect to such members.

trading surveillance, investigations, and enforcement for the U.S. options markets. The Exchange believes its existing surveillance procedures are designed to deter and detect possible manipulative behavior which might potentially arise from listing and trading the proposed binary options. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options, including cooperation with FINRA to update insider trading surveillances to incorporate the unique characteristics of binary KPI options.

The Exchange will report any information regarding binary KPI options required to be reported to the Consolidated Audit Trail (“CAT”) in the same manner it reports this information to CAT for all other options the Exchange lists.⁶⁸ The Exchange understands from FINRA CAT — the administrator of the CAT — that no technical changes are required to accommodate the reporting to CAT of information regarding binary KPI options (the Exchange represents, if later required by FINRA CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options).

Pursuant to the Options Order Protection and Locked/Crossed Market Plan (“Linkage Plan”),⁶⁹ participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and Exchange Rules 5.65 through 5.67 regarding intermarket linkage) applies to the trading of multiply listed options. Rule 5.36 addresses order routing away

⁶⁸ CAT reporting requirements will apply to broker-dealers with respect to binary KPI options in the same manner as they apply to any other options the Exchange lists. The Exchange understands from FINRA CAT there will be no changes to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to CAT.

⁶⁹ The Linkage Plan requires U.S. options exchanges to establish a framework for providing order protection and addressing locked and crossed markets in eligible options classes. The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. The full text of the Linkage Plan is available at https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.

from the Exchange to promote compliance with the Linkage Plan. If the proposed binary KPI options become multiply listed options, Users may designate a binary KPI option order for routing (or not available for routing) in the same manner they do for other multiply listed options, and the Exchange System is designed to prevent trade-throughs and avoid displaying locked/crossed markets in accordance with the Linkage Plan for all multiply listed options (and Exchange Rules 5.65 through 5.67 regarding intermarket linkage).

Upon launch, binary KPI options will clear through CCUS, subject to CCUS receiving approval of its application for temporary registration as a registered clearing agency under Section 17A of the Act and of the proposed updates to its rules to accommodate the clearing of binary KPI options. Additionally, the Exchange has submitted to the Commission an options disclosure document describing the characteristics and risks associated with the trading of binary KPI options in accordance with Rule 9b-1 under the Act.⁷⁰ In connection with the clearing of binary KPI options through CCUS, if CCUS receives approval of its temporary registration status, the Exchange will then submit to the Commission a separate rule filing to reflect that these options will be cleared initially by CCUS (as the Rules currently contemplate clearing of options traded on the Exchange through OCC). The Exchange represents it will not list for trading binary KPI options until all applicable filings and documents of CCUS related to binary KPI options being cleared through CCUS are approved by the Commission or effective after review by the Commission, as applicable.

Further, the Exchange understands FINRA may submit a separate rule filing in due course for various clarifying changes to its rules to similarly reflect the trading of binary KPI options and the clearance of options through CCUS. The Exchange is unaware of the

⁷⁰ 17 CFR 240.9b-1.

effectiveness of any such FINRA rule filing being a prerequisite for the listing and trading of binary KPI options on the Exchange. However, the Exchange will provide FINRA with any information it requests in connection with any rule filing it determines to submit in connection with the trading of binary KPI options and their clearance through CCUS.

The Options Listings Procedure Plan (the “OLPP”) sets forth procedures to facilitate the listing and trading of standardized options. The OLPP currently describes procedures with respect to options issued by and cleared at OCC. The Exchange will take steps necessary and within its authority to propose amendments to the OLPP to reflect listing procedures applicable to options that will be cleared by CCUS, including binary KPI options. If an amendment to the OLPP to apply those procedures to CCUS is not effective before the Exchange begins listing binary KPI options, that will have no impact on the listing or trading of binary KPI options, as the Exchange will certify and list binary KPI options following the same procedures at CCUS as it does for other options at OCC.

If, after Commission approval of both this rule filing and CCUS’ clearing agency registration application, OCC submits a proposal to the Commission to amend its rules to clear binary KPI options, the Exchange acknowledges that the OLPP will require amendment. Certain provisions of the current OLPP (including, but not limited to, the ability for additional registered clearing agencies to become OLPP Sponsors, the process for requesting a new series of binary KPI options, and the application of the indemnification clause to CCUS as it relates to those options exchanges that clear binary options through CCUS) reference only OCC as a clearing agency for listed options. The purpose of such an amendment would be to update these OLPP provisions to account for the fact that both CCUS and OCC could clear binary KPI options. Accordingly, the Exchange agrees that it will file with the Commission a proposed amendment

to the OLPP (pursuant to Rule 608 of Regulation NMS) no more than 10 business days following Commission publication of a notice of filing of a proposed rule change by OCC to amend its rules to clear binary KPI options, and will operate in good faith in cooperating with the Commission, the OCC, and CCUS to ensure such proposed amendment reflects the changes referenced above as well as any additional changes the Commission may deem necessary or appropriate in light of the foregoing in the interest of maintaining fair and orderly markets and the protection of investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁷¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

⁷¹ 15 U.S.C. 78f(b).

⁷² 15 U.S.C. 78f(b)(5).

⁷³ Id.

Binary KPI Options Are Securities

As an initial matter, the Exchange believes that the binary KPI options proposed herein are “securities” under the Act.⁷⁴ The Act defines the term “security” to include “any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof).”⁷⁵ As discussed above, the Commission has already approved Rules addressing binary options overlying securities indexes, and the binary KPI options will operate in substantially the same manner as these binary options but with a different underlying (specifically, an issuer KPI). Moreover, the reasons the Commission previously articulated when it determined that credit default options (“CD options”) were securities and approved CD options to be listed on the Exchange apply to the binary KPI options as well.⁷⁶

Like the previously approved binary options and CD options, the binary KPI options contracts proposed herein satisfy the definition of “security” in the Act because they are options that are “based on the value [of a security or securities] or “any interest therein.”⁷⁷ The proposed KPIs, including net income, net sales, net interest income, provision for credit losses, and

⁷⁴ For the same reasons discussed herein, the Exchange believes the binary KPI options contracts are also “securities” under the Securities Act of 1933, as amended. See 15 U.S.C. 77b(a)(1).

⁷⁵ 15 U.S.C. 78c(a)(10). See also *Caiola v. Citibank, N.A.*, New York, 295 F.3d 312, 325 (2d Cir. 2002), quoting *United Housing Foundation v. Foreman*, 421 U.S. 837, 848 (1975) (“In searching for the meaning and scope of the word ‘security’ . . . the emphasis should be on economic reality”).

⁷⁶ See Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (SR-CBOE-2006-84) (order approving the Exchange’s proposal to adopt CD options) (“CD Options Approval”).

⁷⁷ The Commission has confirmed on numerous occasions that the term “security” includes options that are based on the value of securities or that are interests in securities. See, e.g., CD Options Approval, at 32376-77 (concluding that CD options “are options ‘based on the value [of a security or securities]’ and, therefore, securities” and that credit default options “are options on an ‘interest in,’ or based on the value of an interest in, a security or securities within the meaning of Section 3(a)(10) of the Act”) (brackets in original); In the Matter of EZTD, Securities Exchange Act Rel. No. 79292 (Nov. 10, 2016) (finding that “[a]ll of the binary options that EZTD offered and sold to U.S. customers, however, are options based on the value of a security or index of securities, and thus are securities under the [definitions in the Securities Act and the Exchange Act]”).

specified expense metrics, are recognized by investment professionals and analysts as among the most significant inputs into the valuation of an issuer’s stock; therefore, a binary option with such an underlying KPI is based on the value of the security to which the KPI relates. As the CFA Institute has observed, fundamental financial metrics (including revenue, earnings, and net income) serve as the primary inputs to equity valuation models used by investment professionals to determine the intrinsic value of a company’s shares.⁷⁸

The proposed rule change would apply to certain KPIs — primarily financial metrics such as revenue, earnings and income — of specified issuers that are disclosed in required Commission reports (i.e., those reports that provide investors with information about the issuer that the issuer considers to be material to making an investment decision with respect to that issuer’s securities). Issuers disclose these KPIs in earnings-related filings submitted to the Commission because these KPIs are material to investors in evaluating the value of the underlying stock. Indeed, the Commission noted in its recent proposal to permit issuers to submit semiannual reports rather than quarterly reports that “[i]n addition to protecting investors, greater availability of material information allows securities prices to better reflect their issuers’ fundamental value and ultimately promotes capital formation as issuers have access to lower cost of capital and investors in those issuers’ securities have access to higher liquidity.”⁷⁹ Therefore, the Commission recognized that the value of securities is based, in part, on material information

⁷⁸ See, e.g., discussion in CFA Institute Member Survey Report, 2018 (“CFA Institute Report”), available at <https://www.cfainstitute.org/sites/default/files/-/media/documents/survey/key-performance-indicators-survey.pdf> and May 1, 2025 Comment letter on FASB Invitation to Comment - Financial Key Performance Indicators for Business Entities (file reference no: 2024-ITC100): <https://rpc.cfainstitute.org/sites/default/files/docs/comment-letters/fasb-financial-kpis-itc-response.pdf> (“Alternative performance measures (APMs), which include Financial KPIs and non-financial KPIs (e.g., same-store sales, average revenue per user) are of such importance that investor organizations have proposed a dedicated standard setting board for them.” p. 2.)

⁷⁹ See Semiannual Reporting, Securities Exchange Act Release No. 105368, at 66 (May 5, 2026).

— such as KPIs disclosed in earnings-related filings submitted to the Commission. A binary option whose payoff is contingent on whether an issuer achieves one of the KPI thresholds identified in the proposed rule change is, therefore, an instrument whose payoff depends on information that directly influences the intrinsic value of the issuer’s security and that the market uses as a basis for pricing the security itself. An option that is based on one or more of the proposed KPIs is, therefore, “based on the value of” that issuer’s security within the meaning of the Act.

The underlyings the Exchange is proposing for binary KPI options are KPIs for certain public company issuers that are (1) included in those issuers’ financial filings submitted to the Commission and (2) important to determinations of the values of the issuers’ stocks. An issuer frequently includes KPIs and metrics material to the financial condition and results of operations of the company as part of the disclosure requirement in Management’s Discussion and Analysis of Financial Condition and Results of Operations (“MD&A”) in reports and registration statements the issuer files with the Commission under both the Act and the Securities Act.⁸⁰ The relevant obligation “requires disclosure of information not specifically referenced in the item that the company believes is necessary to an understanding of its financial condition, changes in financial condition and results of operations,” which can include KPIs.⁸¹ In providing guidance to issuers on the use of KPIs in their MD&A disclosure, the Commission observed that “[w]hen

⁸⁰ See, e.g., Item 303 of Regulation S-K. 17 CFR § 229.303. “The objective of the discussion and analysis is to provide material information relevant to an assessment of the financial condition and results of operations of the registrant including an evaluation of the amounts and certainty of cash flows from operations and from outside sources,” and the MD&A discussion and analysis “must be of the financial statements and other statistical data that the registrant believes will enhance a reader’s understanding of the registrant’s financial condition, cash flows and other changes in financial condition and results of operations.” Id.

⁸¹ See Commission Guidance on Management’s Discussion and Analysis of Financial Condition and Results of Operation, Securities Exchange Act Release No. 88094 (Jan. 30, 2020).

proposing the current MD&A framework, the Commission noted that “[f]or each business, there is a limited set of critical variables which presents the pulse of the business.”⁸² Due to their importance, certain KPIs directly inform an investor’s assessment of the valuation of an issuer’s stock.⁸³

To qualify as a “security” under the Act, an option need not be restricted only to referencing the specific dollar value of a security. When approving the Exchange’s listing of CD options, the Commission concluded that the CD options were “securities” even though the CD options “do not share every feature of a classic option.”⁸⁴ In determining that CD options are “based on the value [of a security or securities]” and, therefore, that they are securities, the Commission stated that CD options “expressly reference in their payout conditions a term of an underlying security that is material to the value of that security.”⁸⁵ This is also the case with the binary KPI options identified in the proposal: the KPIs selected are “material to the value” of a particular security, and payouts of binary KPI options are conditioned on those terms. Indeed, the nexus between the proposed KPIs and the value of the underlying security is, if anything, more direct than in the case of CD options. Whereas CD options reference a credit event (a contingency that may or may not affect the market value of the reference security depending on recovery rates and market conditions), binary KPI options reference the issuer’s actual reported financial or operating performance, and the underlying KPIs are the metrics investors consider

⁸² Id.

⁸³ For example, in responding to a November 2024 request for comment by the Financial Accounting Standards Board regarding financial KPIs for business entities, the CFA Institute submitted a comment letter on behalf of its members, answering the question “How often do you use Financial KPIs in your analysis?” with an answer of “All the time.” CFA Institute Report at n.46.

⁸⁴ CD Options Approval at 32375 n.34. The Commission specifically noted that “the fact that the payout of a cash-settled option will not increase or decrease based on the price movement of the underlying security of that option is not dispositive.” Id. at 32375.

⁸⁵ Id. at 32376.

when determining the value of a stock. Unlike an exogenous event that merely holds the potential to trigger potential financial consequence for a security, each of the proposed KPIs (whether measured at the consolidated or segment level) ultimately constitutes a material component of the issuer's financial results that itself forms the basis for investors' measurements of a company's (and its stock's) intrinsic value.

Certain KPIs in the proposal (including, for example, those based on earnings per share) also result in binary KPI options overlying those KPIs being options based on an "interest in," or based on the value of an interest in, a security or securities within the meaning of Section 3(a)(10) of the Act. In the CD Options Approval, the Commission observed that "[a] security is a collection of rights (and obligations) running between the issuer and the holder of the security" and that "[t]he concept of an 'interest in' a security plainly includes rights generating a pecuniary interest in a security, such as the right to a dividend payment or bond (coupon) payment."⁸⁶ The Commission stated that, for CD options, it was "important to note that merely because the option does not transfer ownership of the interest or right in a security — but instead becomes in-the-money and provides a cash payment if certain security rights are triggered — does not mean the option is not on an interest in a security."⁸⁷ Similarly, each binary KPI option proposed herein provides a cash payout based on the value of the disclosed KPI. Some of such KPIs are directly tied to a pecuniary interest in a security, such as earnings per share (which represents a stockholder's pro rata claim on the issuer's profits and is the basis for both dividend distributions and earnings-driven appreciation in the value of the security), and others are indirectly tied to the pecuniary interest of a security, such as the issuer's net revenue

⁸⁶ Id.

⁸⁷ Id. at n.46.

and income, which determine the issuer's capacity to generate returns for stockholders. A stockholder's pecuniary interest in a security is not limited to contractual payment rights (such as declared dividends) but encompasses the right to benefit from the issuer's earnings capacity, as reflected in the market price of the security. Binary KPI options based on earnings metrics therefore reference a core component of the stockholder's pecuniary interest.

Although the Act does not separately define the term "option," the CEA's definition of "option" lends further support to the classification of binary KPI options as securities. The CEA defines "option" as "an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty'."⁸⁸ This functional definition focuses on the character of the instrument and common usage rather than formal labels, and the binary KPI options proposed herein exhibit the defining characteristics of the previously Commission-approved binary options through standardized terms established by the Exchange: the nature of the underlying interest, the settlement method, the multiplier, the exercise style of the option, whether the option has automatic exercise provisions, the expiration date, and the exercise price. Specifically, binary KPI options are associated with an underlying KPI as designated by the Exchange. The Exchange establishes these options as cash-settled (the settlement method) that are European-style (the exercise style of the option) and will be automatically exercised if the requirements for exercising the option have been met. Binary KPI options have a multiplier of one. As is the case for all other options listed on the Exchange, each binary KPI option will include an expiration date and a strike price in accordance with the proposed Rules. As such, the binary KPI options contracts are appropriately categorized as standardized options. Notably, as

⁸⁸ 7 U.S.C. 1a(36).

further discussed below, the binary payout structure does not transform these instruments into event contracts or swaps even though binary KPI options would likely meet the definition of “security-based swap”⁸⁹ (but would, therefore, still be “securities” subject to the Commission’s jurisdiction⁹⁰) if they were not excluded from the definition of “swap.”⁹¹ The Commission has previously approved binary options with all-or-nothing payouts, including binary index options, for listing on the Exchange, as securities options. The distinguishing feature is not the shape of the payout curve but rather the nature of the underlying interest: where the underlying is a security, an interest therein, or based on the value thereof, the instrument is a securities option regardless of whether its payout is variable or binary.

The OCC’s Options Disclosure Document (“ODD”) includes the characteristics above in the list of standardized terms of options generally.⁹² More specifically, the ODD attributes these same characteristics to binary options. Although the ODD defines an option generally as “the right to buy or sell a specified amount or value of a particular underlying interest at a fixed exercise price by exercising the option before its specified expiration date,” it notes that cash settlement does not preclude an instrument from being an option: “Certain special kinds of options may give a right to receive a cash payment if certain criteria are met.”⁹³ More specifically, the ODD describes binary options as follows: “A binary option is a cash-settled option having only two possible payoff outcomes: either a fixed amount or nothing at all . . . The

⁸⁹ The term “security-based swap” is defined in the Act, and that definition is incorporated by reference into the CEA. See 15 U.S.C. 78c(a)(68) (defining the term); and 7 U.S.C. 1a(42).

⁹⁰ Security-based swaps are “securities” under the Act. See 15 U.S.C. 78c(a)(10).

⁹¹ See 7 U.S.C. 1a(47)(B)(iii).

⁹² See Characteristics and Risks of Standardized Options, Options Clearing Corporation at 3 (June 2024) (“ODD”). The ODD was amended to add disclosure on binary options in June 2008. See Securities Exchange Act Release No. 57744, 73 FR 25072 (May 6, 2008).

⁹³ ODD at 3.

binary options approved for trading are all subject to automatic exercise. The holder of a binary option . . . has the right to receive (and the writer of a binary option has the obligation to pay) the exercise settlement amount for the option if the value of the underlying interest as of the time specified by the applicable listing options market (i.e., the exercise settlement value) meets the criteria for automatic exercise of the option, as specified in the rules of the listing options market. If those criteria are not met, the option will expire worthless. . . . binary options are European-style options.”⁹⁴ Accordingly, the binary KPI options proposed herein have the character of binary options (and thus standardized options) and are commonly understood to function as such.

Moreover, the Exchange emphasizes that the “based on the value of” analysis does not depend on a generalized statistical relationship between KPIs and stock prices in the aggregate, but rather on the demonstrated materiality of each specific KPI to the specific issuer’s stock for which binary KPI options are proposed. Under the proposal, the Exchange will designate the applicable KPI and the relevant reporting period at the time of listing. This issuer-specific designation ensures that the Exchange has determined, prior to listing, that the particular KPI is material to the valuation of the respective issuer. Critically, the Exchange’s materiality determination is not made in isolation; it is corroborated by reporting requirements or the issuer’s own judgment. An issuer’s inclusion of a KPI in its earnings-related filings submitted to the Commission — if the metric is not otherwise required by regulation to be included — reflects the issuer’s independent determination, made subject to the officer certifications required under the Sarbanes-Oxley Act of 2002, that such metric is necessary for investors to understand the issuer’s financial condition and results of operations, and is therefore material to an investor’s

⁹⁴ Id. at 8.

valuation of the issuer's securities. The issuer's disclosure decision thus constitutes a determination by the issuer itself that the KPI is material to the value of its stock.

Additionally, treating the binary KPI options proposed herein as securities is consistent with the position taken by the Commission and the U.S. Commodity Futures Trading Commission ("CFTC" and, together with the Commission, the "Commissions") in the 2012 joint rulemaking⁹⁵ further defining "swap" and "security-based swap," in which the Commissions stated that the "swap" and "security-based swap" definitions were not intended to capture existing options products and that securities options, including exchange-traded equity options and listed index options, remain subject to the existing Commission options regulatory regime and are not reclassified as swaps or security-based swaps.⁹⁶ Importantly, the Commissions further cautioned against an overly broad application of the swap definitions where an instrument does not functionally operate as a swap.⁹⁷

⁹⁵ See, e.g., Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Securities Exchange Act Release No. 67453, 77 FR 48208 (August 13, 2012).

⁹⁶ See *id.* at 48211 (noting that the definitions of "swap" and "security-based swap" "could be read to include certain types of agreements, contracts, and transactions that previously have not been considered swaps or security-based swaps, and nothing in the legislative history of the Dodd-Frank Act appears to suggest that Congress intended such agreements, contracts, or transactions to be regulated as swaps or security-based swaps under Title VII"). The Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") was signed into law in July 2010 and added definitions of "swap" and "security-based swap" into the CEA and the Act. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010). The Exchange notes that binary options (on SPX from April 21, 2010 to January 16, 2015; and on VIX from April 21, 2010 to August 16, 2017) and credit default options (from June 19, 2007 to October 2008 and April 26, 2011 to December 26, 2014) were traded as standardized options on the Exchange after the Dodd-Frank Act was adopted.

⁹⁷ See *id.*; see also 77 FR 48208, at 48211 ("Title VII also calls on the agencies to treat functionally or economically similar products or entities in a similar manner, but does not require identical rules."). Section 712(d)(1) of the Dodd-Frank Act provides that the CFTC and the SEC, in consultation with the Board of Governors of the Federal Reserve System, shall jointly further define the terms "swap," "security-based swap," and "security-based swap agreement." Section 712(a)(7)(A) of the Dodd-Frank Act further provides that "[i]n adopting rules and orders under this subsection, the [CFTC] and the [SEC] shall treat functionally or economically similar products or entities described in paragraphs (1) and (2) in a similar manner."

The definition of “security-based swap” in the Act is broad enough to include binary KPI options if they are “swaps”; however, because the binary KPI options are options, they are not “swaps” or “security based swaps.”⁹⁸ This is because the CEA expressly excludes from the definition of “swap” “any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to [the Securities Act and the Act].”⁹⁹ Pursuant to this exclusion, if an instrument qualifies as a securities option under the Act and the Securities Act (as the Exchange believes the proposed binary KPI options do), it is categorically removed from the swap and security-based swap definitions as a matter of statutory construction. Put another way, because security-based swaps are, by definition, a subset of swaps, an option that falls within the definition of “security” in the Act and the Securities Act is excluded from the definition of “swap” and, thus, cannot, as a matter of statutory construction, be a security-based swap.¹⁰⁰

⁹⁸ The definition of “security-based swap” generally includes “any agreement, contract or transaction that is [a swap and is] based on . . . the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.” 15 U.S.C. 78c(a)(68)(A)(ii)(III).

⁹⁹ 7 U.S.C. 1a(47)(B)(iii).

¹⁰⁰ In the recent “Statement on Tokenized Securities” published jointly by the Division of Corporation Finance, the Division of Trading and Markets, and the Division of Investment Management, the interplay of the statutory definitions of “security,” “swap” and “security-based swap” was laid out plainly as follows (footnotes omitted, emphasis added):

The assessment of whether a financial instrument is a security-based swap or a linked security depends, in part, on the exclusions from the definition of “swap.” There are several exclusions from the definition of “swap” relating to securities. To the extent a financial instrument falls into one of these exclusions, it is not a swap and, therefore, is not a security-based swap. For example, any note, bond, or evidence of indebtedness that is a security, as defined in Section 2(a)(1) of the Securities Act, is excluded from the definition of swap. *Similarly, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act and the Exchange Act, is excluded from the definition of swap.*

SEC Division of Corporation Finance, Division of Investment Management, Division of Trading and Markets, *Statement on Tokenized Securities* (Jan. 28, 2026).

Classifying binary KPI options as securities options under the Act is consistent with the Commission’s established regulatory framework for binary options, including investor protection objectives, and preserves the integrity of antimanipulation restrictions, insider trading prohibitions, and material nonpublic information (“MNPI”) controls. More specifically, because these contracts are tied to Commission disclosure rules and regulations and MNPI risks that are substantially identical to those present in traditional securities trading, aligning binary KPI options with the securities regulatory framework preserves the integrity of insider trading prohibitions and the Commission’s disclosure regime. Listing binary KPI options on a registered national securities exchange subjects trading activity to SRO and Commission surveillance for, among other things, manipulative trading and insider trading, affording investors the full protection of the federal securities laws. Further, classifying binary KPI options as security options under the Act allows these contracts to be traded by the same liquidity providers that trade listed options today, all of whom are Commission-registered and regulated broker-dealers who are also subject to FINRA and exchange SRO oversight, and allows such contracts to be traded by the same retail customer base that trade binary options (and KPI-related contracts) today.

Proposal

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions

¹⁰¹ 15 U.S.C. 78f(b).

in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it establishes a clear and transparent framework for a new category of listed options (binary KPI options) that are tied to financial and operating metrics of issuers that are publicly disclosed in earnings-related filings issuers submit to the Commission. Currently, investors wishing to position their investment strategies around earnings disclosures must rely primarily on equity options, whose pricing is affected by a wide range of variables beyond the reported financial or operating measure of interest (e.g., implied volatility, delta, time value, and general market movement). Binary KPI options allow investors to take a targeted, defined-risk position directly on a specific financial or operating measure (i.e., an issuer KPI) for a particular reporting period. The Exchange believes this additional investment tool will protect investors and the public interest because it will promote market efficiency, enable more precise price discovery around earnings events, allow investors to hedge against potential idiosyncratic risks, and close a gap in current national securities exchange-listed products available to market participants.

The Exchange believes the proposed list of issuers and KPIs on which the Exchange may list binary KPI options will prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. First, as noted above, the Exchange is proposing to list binary KPI contracts based on specific financial and operating metrics reported by the following issuers in their earnings-related filings submitted to the

Commission: Apple, Inc.; Advanced Micro Devices, Inc.; Alphabet Inc.; Amazon.com, Inc.; Bank of America Corporation; Citigroup Inc.; Coinbase Global, Inc.; Ford Motor Company; Intel Corporation; JPMorgan Chase & Co.; Marathon Digital Holdings, Inc.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; NVIDIA Corporation; Palantir Technologies Inc.; Robinhood Markets, Inc.; SoFi Technologies, Inc.; Space Exploration Technologies Corp.; Super Micro Computer, Inc.; Target Corporation; Tesla, Inc.; and The Walt Disney Company. The Exchange believes offering investors an additional investment tool on a national securities exchange related to some of the most actively traded stocks and options will perfect the mechanism of a free and open market and benefit investors by allowing them to further refine their investment strategies, including using binary KPI options to hedge idiosyncratic, event-specific risk embedded in the specific KPIs (as further discussed below), for these actively traded companies.

The Exchange believes the proposed universe of issuers will prevent fraudulent and manipulative acts and practices, because the proposed issuers are large, well-capitalized, and widely followed issuers with highly liquid underlying securities and options markets. During May 2026, each of the issuers exceeded \$3 billion in market capitalization and ranked among the top 200 U.S. companies by average daily options or stock volume, with the exception of Space Exploration Technologies Corp (commonly referred to as SpaceX), which did not begin trading until June 2026 but which the Exchange believes will satisfy these measures with its first month of trading results based on its volumes since it began trading.¹⁰² Securities with high market capitalizations and liquid markets are generally less susceptible to manipulation because of the

¹⁰² The ADV of SpaceX stock between June 12 and June 22, 2026 was approximately 290,009,963 shares. The market capitalization of SpaceX as of June 22, 2026 was \$2.145 trillion.

substantial capital required to artificially influence prices of those securities. The depth and breadth of trading activity for securities with significant market capitalizations, such as the stocks of the proposed issuers, make it unlikely that a single market participant would be able to exert undue influence on the price of such a stock, as large volumes of buyers and sellers are what ultimately continuously reflect the true market value of the stock. The Exchange believes the KPIs of issuers with high market capitalizations proposed to underlie binary KPI options are similarly less susceptible to manipulation because any attempt to distort a financial metric of such an issuer would require an enormous and economically impractical deployment of capital, which would likely exceed the fixed payout of a binary KPI option. Therefore, like stocks of large-cap issuers, KPIs of large-cap issuers are less susceptible to manipulation due to the structural barriers that would make manipulating KPI values operationally difficult and financially irrational (in addition to the rigorous financial oversight to which these issuers are subject, as further discussed below).

In addition to the proposed issuers being highly capitalized and having actively traded stocks and options on such stocks, the Exchange also believes the proposed limited universe of issuers for binary KPI options to those proposed will prevent fraudulent and manipulative acts and practices because each issuer is subject to current and periodic reporting requirements under the Act. Therefore, each of the proposed issuers must file annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K with the Commission, which as discussed above disclose information the issuer believes is necessary for an investor to understand its financial condition, changes in financial condition, and results of operations, which can include KPIs. Further, each issuer maintains audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (“GAAP”) and is subject to

executive certification requirements under the Sarbanes-Oxley Act. As a result, the settlement-determining KPI values for each eligible issuer are produced within the Commission's supervisory jurisdiction, are publicly verifiable from a Commission-regulated source, and are subject to relevant anti-fraud provisions under the Act, which the Exchange believes will reduce the potential for manipulation of the underlying KPIs as well as the applicable issuer's stock.

Further, the Exchange believes the proposed limited universe of issuers will introduce binary KPI options in a well-developed, well-understood, and transparent Commission-regulated market environment. Each issuer is among the most widely followed, actively traded, and extensively analyzed issuers in its respective sector, with deep and liquid equity and derivatives markets and a broad institutional and retail investor base. The depth of existing market activity surrounding these issuers supports fair and orderly pricing by ensuring that binary KPI options are listed in markets where price discovery is well-established, liquidity is readily available, and participants have broad access to the information necessary to form and express informed views on KPI outcomes. The Exchange believes the continuous public scrutiny to which these issuers are subject substantially reduces the likelihood that any market participant could obtain or maintain an informational advantage sufficient to manipulate the settlement value of the binary KPI options.

The Exchange believes the proposed KPI metrics will similarly prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange's proposal limits eligible KPIs to GAAP and non-GAAP measures and other statistics related to an issuer's financial condition and operational results, all of which the proposed issuers disclose in their earnings-related filings (i.e., Forms 8-K, 10-Q, and 10-K)

submitted to the Commission. As such, the settlement values of the proposed binary KPI options are derived exclusively from information that issuers deem as material information required to be disclosed in filings submitted to the Commission. These metrics are routinely referenced and tracked in the investment community, which the market recognizes as meaningful and central indicators of issuer performance. The Exchange believes the inclusion of well-established metrics as eligible KPIs expands the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process.

The Exchange proposes new Rule 4.81 to list the specific binary KPI contracts with the KPI criteria for each option contract. Such KPI criteria are established as the set KPI events that will be used to determine whether an option contract should be exercised by comparing the strike price of the binary KPI option to the KPI settlement value. The proposed KPI metrics are among the most widely followed and extensively analyzed measures for the proposed issuers. Specifically, the Exchange proposes to be able to list a binary KPI option on earnings per share (prepared in accordance with GAAP) for each proposed issuer. This metric is among the most widely followed and extensively analyzed figures in public company financial disclosures and is disclosed in each issuer's current or periodic Commission filings. Similarly, the Exchange proposes to list binary KPI options on revenue, prepared in accordance with the applicable GAAP, for each issuer. As is the case for earnings per share, revenue is a widely followed financial metric for public reporting companies and is the subject of extensive analyst coverage.

The Exchange proposes KPIs representing revenues broken out by applicable reportable segment, business unit, or product category, including cloud and artificial intelligence infrastructure revenues, streaming and geographic subscription revenues, automotive segment revenues, financial services segment revenues, consumer product category revenues, and digital

asset exchange transaction and subscription revenues, among others, for several of the proposed issuers. Each such metric is a GAAP-defined figure required to be disclosed in the issuer's current or periodic Commission filings. The Exchange understands these metrics enable market participants to express views on specific high-profile business lines that are extensively covered by analysts and subject to a high volume of publicly available forecasts.

The Exchange proposes KPIs for the proposed financial institution issuers that are specific to financial institution income statement presentation, including net interest income, provision for credit losses, and net income. Each such metric reflects the distinct GAAP reporting framework applicable to banking institutions and is subject to the same current and periodic disclosures as other proposed KPIs.

The proposed rule change also includes operating margin, gross margin, or cash flow from operations KPIs for several issuers, each of which is computed directly from GAAP financial statement line items disclosed in the issuer's current and periodic Commission filings. These metrics provide market participants with insight into issuer profitability and capital generation and complement other revenue and earnings figures when market participants are evaluating the value of an issuer and its stock.

The Exchange also proposes several non-financial operational KPIs that issuers disclosed in their current and periodic Commission filings, including relevant production volumes, network and infrastructure counts, user engagement metrics, deal counts, digital asset trading volume, and digital asset mining and holdings metrics. Each designated non-financial operational metric is closely tied to the core economic activity of the respective issuer's business and is a figure the issuer has affirmatively chosen to disclose to the public as a key indicator of business performance. Issuers typically designate and disclose such metrics because they are understood

by the market to be among the most meaningful measures of issuers' business activities. As discussed above, this is consistent with Commission guidance that an issuer should include KPIs in its earnings-related filings submitted to the Commission that the issuer believes an investor needs to gain understanding of its financial condition, changes in financial condition, and results of operations, as such KPIs present the "pulse" of the issuer's business. The market significance of these metrics is further reflected in the extensive analyst coverage and investor attention, particularly near each earnings disclosure date. Each metric is subject to executive certification as part of the filing in which it appears and is widely tracked by financial data services and equity research analysts.

Overall, the Exchange believes that the proposed well-established, publicly reported metrics as eligible KPIs will expand the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process. As a result, the Exchange believes the proposed KPIs will protect investors and the public interest, as the ability to list binary KPI options overlying these issuer KPIs will permit the Exchange to offer investors additional investment and hedging tools on the Exchange that investors can incorporate into their investment strategies regarding the proposed issuers.

The Exchange believes the proposed contract terms for binary KPI options will promote just and equitable principles of trade, remove impediments to and perfect a free and open market and national market system, and protect investors. As discussed above, the proposed contract terms for binary KPI options are standardized option terms. Like traditional option contracts and binary index option contracts currently listed for trading on the Exchange, each proposed binary KPI option will be a call or a put, will have an underlying, exercise price, an expiration date, a settlement type, an exercise style, and a multiplier. As is the case for binary index options, each

proposed binary KPI option will have an exercise settlement amount paid depending on how the settlement value of the underlying KPI compares to the exercise price.

The proposed binary KPI options will function in a substantially similar manner as, and have substantially similar contract terms to, binary index options the Exchange may already list pursuant to its Rules. The proposed definitions of binary KPI option, call binary KPI option, exercise price, and put binary KPI option are the same as those terms for binary index options (as previously approved by the Commission), differing only in reference to the underlying (issuer KPI v. index).

The proposed definition of settlement value for binary KPI options is generally similar to the definition for binary index options (as previously approved by the Commission), with certain differences necessary to be addressed due to the different nature of a KPI as the underlying. While the definition of exercise settlement value in Rule 4.70 allows the Exchange to determine the exercise settlement amount for binary index options, \$1 is a permissible exercise settlement amount for those options; therefore, the proposed \$1 exercise settlement amount for binary KPI options is not novel and is consistent with current Rules. The Exchange believes the proposed \$1 exercise settlement amount is reasonable given the retail nature of the proposed binary KPI options and merely adds specificity to the Rules for binary KPI options. The Exchange notes binary KPI options differ from standardized index options (which are also cash-settled) in that the exercise settlement amount is \$1.00 rather than a cash amount equal to the difference between the settlement value of the index and the strike price of an option. Since the \$1.00 exercise settlement amount will be paid out to the option holder if the criterion of the binary KPI option has been met, a binary KPI option has a fixed exercise settlement amount.

The Exchange believes the alternative settlement procedures of the Clearing Corporation described above in the Purpose section are appropriate in that they establish a process to address an unexpected condition, taking into consideration fairness to both option writers and holders. Pursuant to these alternative settlement procedures, the payout amount of a binary KPI option may be based on the market's last valuation of the binary KPI option. If a KPI value is unavailable at settlement, the Clearing Corporation may delay expiration processing in accordance with its Rules. In certain circumstances, if the Clearing Corporation determines that the KPI value is unavailable (and will not become available, such as if an issuer announces it will no longer disclose the KPI value or will not be submitted its earnings-related filing to the Commission for the relevant reporting period), the Clearing Corporation may apply its alternative settlement procedures. Ultimately, the Determinations Committee determines whether the alternative settlement procedures of the Clearing Corporation are appropriate.¹⁰³ Certain events may trigger the alternative settlement procedures, including but not limited to company announcements that a KPI event will no longer be available; a delay in company earnings announcements for an indefinite period; illiquid markets where there are no bid/offer or other data for price discovery. The timing of the triggering of alternative settlement procedures depends on when the Clearing Corporation makes any such determination of the lack of availability of the KPI, which will often be the expiration date (but may be at other times as set forth in the Rules of the Clearing Corporation and further described in the options disclosure document for binary KPI options). If, when applying the alternative settlement procedures, the

¹⁰³ The Determinations Committee is convened by CCUS for the purpose of making settlement and contract-adjustment determinations for binary options issued and cleared by CCUS. The Determinations Committee will be comprised of representatives from CCUS and the exchange(s) on which the option that is subject to review (for a settlement issue or contract-adjustment determination) trades.

Clearing Corporation, in coordination with representatives of the exchange(s) on the Determination Committee, determines that the last closing price is unreliable or inappropriate to use because the binary KPI option has not recently traded or traded with sufficient liquidity, the KPI will be deemed as not met and the binary KPI options will expire unexercised. The Exchange notes that alternative settlement procedures are not novel for options, and alternative settlement procedures vary based on option type.¹⁰⁴

The Exchange believes the proposed expirations for binary KPI options will remove impediments to and perfect the mechanism of a free and open market and a national market system because they will align with the reporting periods for which the proposed issuers disclose earnings results and submit corresponding filings to the Commission. These expirations will, therefore, permit investors to incorporate binary KPI options into their investment strategies that correspond to issuers' earnings results. Further, as discussed above, the Exchange believes aligning expirations with Commission-filed and -regulated sources will reduce the potential for manipulation of the underlying KPIs, which will ultimately protect investors and the public interest.

The proposed rule change establishes a strike regime for binary KPI options similar to that for traditional options and binary index options. As is the case for traditional options and binary index options, the proposed rule change establishes permissible strike intervals, the amounts of which increase as the value of the strike increases. Additionally, the Exchange

¹⁰⁴ For example, for binary index options on indexes issued by OCC, OCC Rules provide for a determination process used when the underlying security price or index value is unreported, inaccurate, unavailable or inappropriate. The OCC determination process utilizes a panel to fix the value of the underlying interest to be used for expiration processing. This process differs from the proposed alternative settlement procedures for binary KPI options because the binary options issued by OCC depend solely on trading price or index value (unlike binary KPI options), and OCC Rules allow specific methods by which an underlying value may be determined for expiration processing if a trading price or value is not available. See OCC By-Laws, Article XIV, Section 5,

proposes to list initial and additional series pursuant to a similar framework as traditional equity options. The differences between the proposed strike regime and that of standard equity and index options are necessary and appropriate to reflect the static nature of KPIs (unlike underlying equities and indexes, the values of which change throughout the trading day) and the timing of their disclosure. As noted above, the Exchange intends to list binary KPI options aligned with the cadence of the KPI disclosures as their expiration cycle (generally quarterly). The Exchange intends to list for trading binary KPI options with expirations for the then-current reporting period (e.g., third quarter) as well as the following period (e.g., fourth quarter) prior to the expiration of the binary KPI options for the then-current reporting period (e.g., third quarter).

As the Exchange does for standard options, as well as binary index options, the Exchange lists strikes (subject to its Rules) based on relevant market information — including the then-current value of the underlying — and customer demand. As described above, the Exchange intends to do the same for binary KPI options by listing strikes relative to the then-current value of the underlying KPI or publicly available estimates from the issuer or major market data vendors. The Exchange believes it is consistent with just and equitable principles of trade to permit the Exchange to list strikes based on all available information that would inform expectations about the KPIs (as investors would do), and then add strikes based on new or updated information, as it will allow the Exchange to list series with strikes consistent with investor expectations and demands. This will enable the Exchange to respond to changes in market conditions for binary KPI options in the same manner it is able to do today for equity and index options (including binary index options), factoring in the static value of KPIs. Specifically, the Exchange believes this flexibility is appropriate for binary KPI options because the value of a KPI changes only when an issuer discloses that KPI, which generally happens every three

months, unlike other underlyings, the value of which changes every trading day. While this proposed strike listing regime for binary KPI options differs from that of other options, the concept is the same, which is to permit the Exchange to list strikes reflective of the then-current value of the underlying and in response to customer demand. It is possible the changed value of an underlying KPI in a more recent earnings disclosure or new or updated estimates may be more sudden and pronounced than changes in the value of an underlying equity or index (which are susceptible to sudden value changes); however, like the listing rules for equity and index options, the proposed rules permit the Exchange to list strikes to reflect changes in the value of the underlying, including substantial changes.

The Exchange believes the proposed scaling of strike prices is reasonable and will protect investors, as it will permit the Exchange to list strike values in amounts similar to current strike values for other options. As noted above, values of certain KPIs may be large (e.g., in the billions). The proposed scaling will permit the Exchange, for example, to list a strike of 27 rather than 27,000,000,000, which the Exchange believes will be simpler for investors to understand (as it will be made clear that 27 will reflect billions in this example¹⁰⁵) and consistent with current strike levels. The proposed scaling also permits the strike prices for binary KPI options to fit within current system capabilities regarding strike price values. The Exchange believes scaling rather than modifying its systems (and potentially causing investors to modify their systems) will benefit investors by allowing them to trade binary KPI options in the same manner as they trade other options today.

¹⁰⁵ The binary KPI option contract specifications available on the Exchange's public website will set forth the scaling factor for each binary KPI option.

The Exchange believes the proposed strike intervals promote just and equitable principles of trade because it will permit the Exchange to list commercially meaningful strikes that will permit investors to tailor their trading strategies with precision. The Exchange acknowledges the proposed strike intervals are smaller than those in current Rules for other types of options. However, the Exchange believes the precision is appropriate and necessary given the nature of KPIs and the proposed binary options. The purpose of binary KPI options is to permit investors to take discrete and precise positions on KPIs. Therefore, the Exchange needs the ability to list strikes with the precision necessary to permit investors to take these positions. For example, an issuer's earnings (or loss) per share is generally a relatively small number (under \$10). While strike intervals for other options are limited to \$0.50 intervals, that would not be meaningful in the context of binary KPI options when investors are looking to take positions for a specific KPI value, which will be measured in penny intervals. Therefore, the Exchange believes smaller strike intervals will benefit investors because they will allow the Exchange to list binary KPI options that will enable investors to use these options in the precise nature for which they are intended and provide sufficient flexibility for the Exchange to list series to respond to changes in market conditions and customer demand, while other proposed rules will place bounds around the strikes the Exchange may list.¹⁰⁶

Further, as discussed above, the proposed strike interval framework is consistent with that of other options, which provides for larger strike intervals as the value of strike prices increases (as described above). Given the scaling factor for larger KPI values, while it may appear the proposed rule change will permit smaller strike intervals for larger KPI values, this is not the case if the actual value (rather than the nominal value) of the strike intervals is considered. The corresponding actual

¹⁰⁶ See proposed Rule 4.82(d) and (e).

value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. As a result, the permissible strike intervals for strike prices representing higher KPI values are larger than the permissible strike intervals for strike prices representing lower KPI values. This is consistent with general premise underlying current strike intervals that larger strike intervals apply to larger strike values and, therefore, the Exchange believes the proposed rule change will promote just and equitable principles of trade.

The Exchange believes the proposed rule change clearly describes the proposed terms of binary KPI options, such as with respect to expirations (including the Exchange's announcement of the specific expiration date after binary KPI options series for that expiration are listed with a placeholder expiration date) and exercise prices (including the scaling factor, negative values, and potential changes to that scaling factor for a binary KPI option class) for all investors. As discussed above, the Exchange will describe the terms of binary KPI options and changes to such terms in Exchange notices, technical specifications (including binary KPI option reference data files), and contract specifications in accordance with Rule 1.5. As this documentation will be posted on the Exchange's public website, it will be available to all investors. Further, Exchange TPHs and retail brokerage firms are highly sophisticated investors and currently intake information regarding other Exchange-listed options (including changes) in the same manner that the Exchange plans to release this information for binary KPI options. As binary KPI options are intended as a retail-focused product, the Exchange understands from retail brokerage firms that binary KPI options will be displayed on the firms' user interfaces in ways that similarly make the terms of the options clear to

their retail customers.¹⁰⁷ Therefore, through information available on the Exchange’s websites and made available by retail brokerage firms to their customers, the Exchange expects retail customers to have access to all relevant information regarding the terms of binary KPI options they choose to trade, including specification of the actual expiration dates and applicable scale values for each KPI.

The proposed rule change specifies a multiplier of one for binary KPI options rather than require the Exchange to designate a multiplier of at least one as the rules for binary index options do. This proposed multiplier is currently permissible as a multiplier for binary index options and is thus consistent with the definition of contract multiplier for binary index options (as that requires a multiplier of at least one) and merely adds specificity to the Rules for binary KPI options.

The Exchange believes proposed Rule 5.1(b)(3)(f), which establishes RTH for binary KPI options, is consistent with the Act, protects investors, and prevents fraudulent and manipulative practices. The Exchange believes the proposed structure ensures that trading in binary KPI options will cease before the earnings disclosure that determines settlement. The distinction between A.M.- and P.M.-settled contracts mirrors the settlement terms already applicable to binary index options, as well as other Exchange products.

The Exchange believes halting trading in binary KPI options in accordance with current Rules (including Rules 5.20 and 5.22) and not automatically if trading in the underlying issuer stock halts will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general,

¹⁰⁷ For example, the Exchange understands from retail brokerage firms they intend to display a binary KPI option of an issuer’s earnings per share of -\$2.47 to expire on the date on which the issuer discloses its third quarter 2026 earnings results as a phrase, such as “will the issuer’s loss per share for the third quarter of 2026 be more than (or less than) \$2.47?”.

protect investors and the public interest. The Exchange generally halts trading in a security to protect investors by allowing time for the market to absorb information or volatility that may impact the value of the security and promote orderly price discovery, thereby reducing the risk that investors trade at stale or distorted prices. The Exchange believes halting trading in binary KPI options in lockstep with trading halts in the issuer's stock and options overlying that stock given the discrete, disclosure-driven nature of binary KPI options' value would not serve these investor-protection purposes. Therefore, the Exchange believes it will benefit investors to permit them to continue to manage and adjust their positions in binary KPI options. If the Exchange believes halting trading in a binary KPI option would be necessary to maintain a fair and orderly market and protect investors based on then-current factors, which may include whether the issuer's stock halts and the reasons that caused the halt, the Exchange will have the authority to do so pursuant to Rule 5.20.

The Exchange believes proposed Rule 5.3(c)(3), which addresses bid and offer conventions for binary options with multipliers other than 100, will provide clarity and consistency in market quotations relative to the notional size of the option and promote investor understanding of the cost and value of binary KPI option contracts. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.¹⁰⁸

Proposed Rule 5.31(d)(1)(D), which provides for binary KPI options, the System initiates the opening rotation at 9:30 A.M., is consistent with the opening rotation trigger for VIX options

¹⁰⁸ The Exchange notes that this proposal is consistent with the existing framework for adjusting bids and offers for mini- and micro-options under Rule 5.3(c)(1) and (2), respectively.

and will allow binary KPI options to open for trading in an orderly and transparent manner. The Exchange believes this provision removes impediments to a free and open market by applying the same proven opening process to binary KPI options that governs other listed options classes on the Exchange. Additionally, unlike equity options, for which the underlying opens for trading and can trigger the opening rotation, KPIs do not trade, so triggering the opening rotation based on a set time is reasonable for binary KPI options.

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 6.5 is consistent with the Act and promotes just and equitable principles of trade because the standard obvious error framework, which evaluates whether an execution price deviates from a “theoretical value” by a prescribed amount, is incompatible with the structure of binary KPI options. Binary KPI options have no continuously observable theoretical value (unlike equity and index options) prior to the date of the earnings-related disclosure. Rather, their exercise settlement amount is fixed at either a pre-specified dollar amount or zero, depending entirely on whether the reported KPI satisfies the exercise condition, which itself is based on a single, publicly verifiable metric, disclosed in issuers’ earnings-related filings submitted to the Commission. An obvious error framework premised on theoretical value calculations is unsuitable for a product with a binary, fixed payout, and application of such a framework to a binary product could produce unjust or arbitrary results for investors. Moreover, because settlement of binary KPI options is determined by metrics an issuer discloses in its earnings-related filings submitted to the Commission (i.e., figures produced pursuant to established accounting standards, subject to independent audit, and certified under the Sarbanes-Oxley Act), the settlement process is itself governed by a comprehensive external regulatory framework. The Exchange believes that establishing any alternative dispute mechanism in this context would be

not only unnecessary, but potentially disruptive to market integrity, as it may introduce an element of post-hoc discretion into a settlement process that is expressly designed to be objective, verifiable, and rule bound. Finally, the Exchange notes that pursuant to proposed Rule 5.34(d), the Exchange may apply a maximum execution price protection for binary KPI options on a class basis, pursuant to which any execution price for a binary KPI option above the Exchange-designated maximum execution price for that class is adjusted down to that maximum execution price. This protection provides investors with an additional safeguard against executions at potential erroneous prices, further limiting the need for a separate obvious error provision applicable to binary KPI options, which the Exchange believes protects investors and the public interest. The Exchange accordingly believes that not applying Rule 6.5 to binary KPI options is a reasonable and justified product-specific accommodation that promotes orderly trading and clear, consistent treatment of transactions in these contracts.

The Exchange believes the proposed amendments related to position limits for binary KPI options are consistent with the Act because they establish a rational position limit framework for binary KPI options that will protect against manipulation while facilitating legitimate trading activity in a novel product. The Exchange believes that setting the position limit for binary KPI options at a fixed level of 25,000 standard options contracts, with 100 binary KPI option contracts equaling one standard option contract, is appropriate. The Exchange believes the proposed position limit, which is the smallest possible position limit that can apply to equity options, is appropriate and consistent with the Act.¹⁰⁹ Specifically, the proposed position limit of 25,000 standard contracts is equivalent to the position limit in Rule 8.30, Interpretation and Policy .02 that applies to an equity option for which the underlying security

¹⁰⁹ See, e.g., Rule 8.30, Interpretation and Policy .02(a).

does not meet the requirements for a higher option contract limit (including newly listed equity options). The position limit for options on the stocks of the issuers of the proposed KPIs is ten times higher (i.e., 250,000 contracts) pursuant to Rule 8.30, Interpretation and Policy .02. Given the large market capitalization and liquidity of these stocks, the Exchange believes the proposed position limit for binary KPI options for the issuers of those stocks is conservative and reasonable for the binary KPI options. Further, the proposed position limit for binary KPI options is equivalent to a position limit the Commission previously approved for binary options on stocks.¹¹⁰ Therefore, the Exchange believes the proposed position limit will promote just and equitable principles of trade, as it is sufficient to mitigate potential manipulation and prevent disruption in the markets for the issuers' stocks and options on the stocks while accommodating investors trading activity for legitimate economic purposes.

As proposed, binary KPI options with a multiplier of one will count toward applicable limits on a proportional basis relative to standard equity options on the issuer's stock, which carry a multiplier of 100. This treatment is consistent with the position limits applied to other reduced-value options, such as micro-options (which also have a contract multiplier of one).¹¹¹ Because the proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 25,000 contracts with a value of \$1.00 with a multiplier of 100 would equate to \$2,500,000 notional value, while 25,000 binary KPI option contracts with a value of \$1.00 (which is the fixed maximum value of a binary KPI

¹¹⁰ See NYSE American, LLC Section 17, Rule 904ByRDs.

¹¹¹ See Rule 8.31(f) (which provides for purposes of determining compliance with the position limits under Rule 8.31, 100 micro-option contracts with an index multiplier of one equal one standard option contract with an index multiplier of 100).

option contract) with a multiplier of one would equate to \$25,000 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of calculating compliance with position limits effectively calibrates these limits so that investors may hold positions in binary KPI options for an economically equivalent number of contracts as they may hold in standard equity options. Therefore, the Exchange believes this proposed treatment is consistent with just and equitable principles of trade, as it counts option positions in a manner equivalent with their value.

The Exchange further believes the proposal regarding position limits is reasonable because it reflects the distinct structure of binary KPI options and their relationship to the underlying issuer. Binary KPI options have a fixed maximum notional value and settle on an all-or-nothing basis based on a KPI of the issuer rather than the price of the issuer's stock as is the case for a standard equity option. The economic risk of a position is binary, in that the contract either settles in-the-money at \$1.00 or out-of-the-money at \$0.00. Additionally, with respect to binary KPI options, the maximum notional exposure per contract is fixed in advance; it cannot exceed \$1.00. Moreover, the exercise of binary KPI option positions would not influence the outcome of the underlying KPI. As a result, the potential for any single market participant to exert undue influence over binary KPI option settlement is limited.

Further, the Exchange's proposal to not aggregate positions in binary KPI options on the same KPI with different expiration dates and positions in binary KPI options for the same issuer with different underlying KPIs similarly reflects the distinct structure of binary KPI options. Each binary KPI option expiration corresponds to a separate event tied to a specific issuer reporting period. Thus, the Exchange believes aggregating positions across different expiration dates would not accurately reflect the risk profile of these positions and would impose an

unnecessary burden on market participants seeking exposure to company KPI events across different reporting periods. In determining that position limits should not be aggregated across all binary KPI options referencing a single issuer, the Exchange analyzed the degree to which KPIs of a given issuer are correlated with one another. Specifically, the Exchange performed a correlation analysis for each company set forth in proposed Rule 4.81(a), measuring the historical co-movement of each company's KPIs across the 16 most recent earnings releases (Q3 2022 through Q2 2026). Of the 223 KPI correlation pairs examined, 30 (approximately 13%) exhibit correlations above 0.90. The Exchange notes that many of these highly correlated pairs involve closely related measures, such as aggregate and segment revenue, where strong co-movement is expected and does not reflect an independent source of concentrated risk. Across the full sample, correlations indicate that the large majority of KPI pairs move substantially independently of one another across earnings periods. Thus, the Exchange believes issuer-level aggregate position limits are not warranted.

Similarly, the Exchange believes it is reasonable to not aggregate binary KPI options with non-binary options contracts overlying the stock of the issuer. Because binary KPI options and equity options overlying the same issuer have different risk profiles (i.e., binary KPI options settle based on the value of a KPI of the issuer rather than its stock price, on which equity options settle), the Exchange believes it would be inappropriate and misleading to require aggregation of these positions for purposes of position limits. As noted above, binary KPI options are based solely on whether a single, specified-issuer KPI meets a discrete threshold at a defined future date, and their value reflects the market's probability assessment of that singular outcome. Standard equity options, on the other hand, reflect a broad array of factors bearing on the price of the underlying security, including macroeconomic conditions and sector dynamics,

of which any individual KPI is only one component. Because the two products are not priced off a common reference and do not represent economically equivalent or fungible exposures, aggregating positions across them would not meaningfully advance the prevention of manipulative practices with respect to the underlying security.

There is further precedent for the proposed nonaggregation framework. Specifically, Rule 4.8(g) provides that positions in Single Stock Dividend Options (“SSDOs”) will not be aggregated with positions in ordinary options overlying the stock of the issuer underlying the SSDOs. The rationale underlying that rule is directly analogous to the rationale supporting nonaggregation of binary KPI options with standard listed equity options on the same issuer. In its SSDO filing,¹¹² the Exchange noted that SSDOs are based solely on expected dividends for an issuer and will reflect the forward value of that expectation. Because the pricing of ordinary options and SSDOs differs dramatically due to fundamentally different inputs, the Exchange concluded there was no need to aggregate positions across the two product types to prevent manipulative practices involving the underlying. The Commission found this approach appropriate and consistent with the Act in its approval of the proposal.¹¹³

The same logic applies to the proposed binary KPI options. Like SSDOs, binary KPI options derive their value from a single, specified variable (whether a particular issuer KPI meets a discrete contractual threshold at a defined date), and their pricing reflects the market’s probability assessment of that singular outcome. In contrast, as noted above, standard equity options on the same issuer reflect a full spectrum of factors which may affect the underlying

¹¹² See Securities Exchange Act Release No. 64654 (June 13, 2011), 76 FR 35503 (June 17, 2011) (SR-CBOE-2011-039).

¹¹³ See Securities Exchange Act Release No. 64991 (July 29, 2011), 76 FR 47280 (August 4, 2011) (SR-CBOE-2011-039).

security's price. The pricing of binary KPI options and standard equity options on the same issuer will therefore differ substantially, for the same structural reasons that the Commission found dispositive in the SSDO context. The Exchange accordingly believes that nonaggregation of binary KPI options with standard equity options is appropriate and consistent with the Act.

The Exchange notes that binary option contracts (Binary Return Derivatives ("ByRDs")) approved for trading at NYSE American and NYSE Arca, Inc. are similarly not aggregated with positions in other options on the same underlying security for purposes of determining compliance with the position limits.¹¹⁴ This is true despite those binary options directly overlying the same stock as non-binary options. When approving such rule (including a position limit of 25,000 contracts for ByRDs), the Commission stated "that the proposed position limits . . . for [ByRDs] are reasonable and consistent with the Act. The proposed position limit of 25,000 contracts in any [ByRD] class appears to reasonably balance the promotion of a free and open market for these securities with minimization of incentives for market manipulation. The proposed margin rules appear reasonably designed to deter a member or its customer from assuming an imprudent position in [ByRDs]."¹¹⁵

Finally, the Exchange believes the proposed amendment to the hedge exemption provision is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a liquidity provider simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (i.e., the short call is at risk if the KPI is met, and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not

¹¹⁴ See NYSE American Rule 904ByRDs (b) and NYSE Arca Rule 5.86-O(b).

¹¹⁵ See Securities Exchange Act Release No. 56251 (August 14, 2007), 72 FR 46523, 46525 (SR-Amex-2004-27).

present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange believes it is reasonable to make the proposed hedge exemption available only to binary KPI positions held by Market-Makers. As described above, the current equity hedge exemption in Rule 8.30 is unavailable to Market-Makers for binary KPI options. The Exchange believes that offsetting binary KPI option creates a similar hedge to one to which the equity exemption is available. The Exchange believes the proposed hedge exemption (in addition to any other exemptions available under Rule 8.30) will allow Market-Makers to provide depth and liquidity in the marketplace for binary KPI options. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also believes the proposed changes to Rule 8.43(f) are consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor TPH positions effectively and detect any accumulation of positions that may approach or exceed applicable limits to the benefit of investors. The Exchange believes it is consistent with just and equitable principles of trade for 100 binary KPI option contracts to equal one standard option contract for purposes of determining whether the report in Rule 8.43(a) is required given the relatively small size of binary KPI contracts compared to standard option contracts. As discussed above, proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100. Therefore, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 200 contracts with a value of \$1.00 with a multiplier of 100 would equate to \$20,000 notional value, while 200 binary KPI option contracts with a value of \$1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to \$200 notional value.

Counting 100 binary KPI contracts as one standard option contract for purposes of this report effectively calibrates the reporting requirement so that investors are required to submit the report for an economically equivalent number of contracts, which promotes just and equitable principles of trade. The Exchange believes the proposal will provide the Exchange and regulators with visibility into large position concentrations in binary KPI options, preserving the ability to identify unusual activity and respond to any unforeseen concerns, while calibrating the threshold to a metric that is meaningful for this contract given its smaller multiplier relative to that of standard equity options. The Exchange believes this reporting framework, coupled with the proposed position limits amendments, provides a fully adequate regulatory framework for these instruments.

Further, as noted above, the Exchange believes it has an adequate surveillance program in place to surveil for any potentially heightened insider trading or manipulation risks that may be presented by the proposed binary KPI options. The Exchange notes that the settlement value of a binary KPI option is sourced from the issuer's earnings-related filing submitted to the Commission. The values of these KPIs are produced through the accounting and reporting processes of the issuer, subject to independent audit prior to submission to the Commission. Because settlement is decoupled from the market price of the underlying security, no amount of trading activity in that security could alter the revenue, earnings, or other metric that determines whether the exercise criterion of a binary KPI option is satisfied. Any manipulation of the reported KPI would constitute securities fraud and expose the issuer to liability under federal securities law, separate and apart from any exchange-related violation.

Moreover, the specifically proposed binary KPI options present a more defined surveillance profile than other event contracts available in the market today. Because settlement

is tied to a well-defined set of issuer-KPI metrics contained in earnings-related filings submitted to the Commission, the relevant surveillance framework operates as a focused subset of the insider trading surveillances the Exchange already applies to standard equity options. The legal prohibition on trading in the issuer's securities, including options, while in possession of MNPI about an unreported KPI is not novel, but rather the same prohibition the Exchange enforces today for standard equity options overlying the issuer's stock.

The Exchange believes the proposed binary KPI options will serve as a vehicle to hedge idiosyncratic, event-specific risk embedded in the specific issuer KPIs. Standard equity options are calibrated to the price of the underlying security and capture a full spectrum of factors or risks which may affect the issuer's value, such as macroeconomic conditions or sector dynamics. Because equity option pricing incorporates this full spectrum, a participant seeking to hedge exposure to a single, discrete KPI outcome cannot do so using standard equity options as precisely as the participant could with binary KPI options. Settlement of a binary KPI option is determined solely by whether a specified-issuer KPI meets a defined threshold, so the contract effectively isolates certain individual risks an investor may seek to manage. For example, consider an investor holding a long-term position in a particular issuer stock, who believes the issuer's quarterly revenue will fall short of expectations (for reasons unrelated to the issuer's long-term prospects). The investor may utilize the binary KPI option to hedge more precisely against the near-term risk without disruption to the underlying equity position. This targeted hedging utility represents a distinct and additive function relative to existing listed products, which the Exchange believes will serve the interests of investors and provide an efficient mechanism for managing event-specific, KPI-driven risk.

The Exchange believes the proposed rule change will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will provide investors with a securities exchange-listed investment choice for these instruments, offering price transparency and the regulatory protections of a national securities exchange. The Exchange believes the proposed rule change will permit investors to manage their risk exposures and carry out their investment objectives on a securities exchange with more flexibility and broader applicability. The Exchange also believes the proposed rule change will promote competition, as it will meet demands of investors that currently may trade products structured in substantively the same manner as the proposed binary KPI options in other markets (as further discussed below). Binary KPI options would provide investors with a straightforward means of expressing a directional view on key financial and operating metrics. The Exchange further believes the proposed rule change is consistent with the protection of investors and the public interest, as binary KPI options would be subject to the Exchange's existing rules governing the listing and trading of options. The Exchange believes expanding the universe of binary options will benefit investors, particularly retail investors and other investors who prefer simplicity, as a complementary offering to current exchange-traded options.

The proposed rule change will permit the Exchange to list binary KPI options on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listing options. These benefits include:

(1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. The Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is intended to provide a market for binary KPI options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, contra-party credit risk for Exchange-listed binary KPI options is significantly reduced through the issuance and guarantee of the contracts by a registered clearing agency. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market-Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options that the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying issuer KPIs, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a national securities exchange would

create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within an established and appropriate regulatory framework designed to afford investors in securities with important protections. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market or other market platforms offer. It would contribute to leveling the playing field with these alternative markets and provide investors with safeguards associated with Commission and SRO oversight of the trading activity in the proposed exchange-listed binary KPI options.

Ultimately, the Exchange believes the proposed rule change will provide investors with greater trading tools and opportunities and flexibility, resulting in investors having additional means to carry out their investment objectives and manage their risk exposures through products listed and traded on a national securities exchange. The Exchange believes the proposed rule change will offer market participants a simplified, transparent, and limited risk investment choice that may be more aligned with their specific timing needs, investment and hedging strategies, and risk tolerances. The Exchange believes it benefits the investing public to continue to enhance its listed product offerings to respond to continuously changing needs of investors and to a continuously changing competitive environment.

A robust and competitive market requires exchanges to respond to investors' evolving needs by regularly improving their offerings. When Congress charged the Commission with supervising the development of a "national market system" for securities, Congress stated its intent that the "national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed."¹¹⁶ Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory

¹¹⁶ See H.R. Rep. No. 94-229, at 92 (1975) (Conf. Rep.).

intervention to determine products and services in the securities markets.¹¹⁷ This consistent and considered judgment of Congress and the Commission is correct, particularly in light of evidence of robust competition in the options trading industry. The fact that an exchange proposed something new is a reason to be receptive, not skeptical — innovation is the lifeblood of a vibrant competitive market — and that is particularly so given the continued internationalization of the securities markets, as exchanges and other platforms continue to implement new products and services to compete not only in the United States but throughout the world. Options exchanges continuously adopt new and different products and trading services in response to industry demands to attract order flow and to increase their trading volume. This competition has led to a growth in investment choices, which ultimately benefits the marketplace and the public. The Exchange believes the proposed rule change will help further competition by providing market participants with yet another investment option for options listed on a national securities exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act,

¹¹⁷ See S. Rep. No. 94-75, 94th Cong., 1st Sess. 8 (1975) (“The objective [in enacting the 1975 amendments to the Exchange Act] would be to enhance competition and to allow economic forces, interacting within a fair regulatory field, to arrive at appropriate variations in practices and services.”); Order Approving Proposed Rule Change Relating to NYSE Arca Data, Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (“The Exchange Act and its legislative history strongly support the Commission’s reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the [self-regulatory organizations] and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.”); and Regulation NMS, 70 FR at 37499 (observing that NMS regulation “has been remarkably successful in promoting market competition in [the] forms that are most important to investors and listed companies”).

because binary KPI options will be available to all market participants who wish to trade such options on the same terms and in the same manner (including with respect to the payout terms and amount). All market participants will be subject to the same rules applicable to binary KPI options, as described in this proposed rule change. Except as set forth in the proposed rule change, binary KPI options will trade in the same manner as other options, including binary index options, on the Exchange.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because other options exchanges may propose similar products. Additionally, as noted above, substantively similar products to the proposed binary KPI options are available in the OTC market and various other markets.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar products. The Exchange believes the proposed rule change will provide investors with a comparable alternative to the OTC market and other venues. The Exchange believes it may be a more attractive alternative to the OTC market and these other venues, as market participants will benefit from being able to trade these options in a securities exchange environment, which provides, among other things: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; (3) heightened contra-party creditworthiness; and (4) investor protections of the securities regulatory framework. As a result, the Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition, as it will allow the Exchange to offer a securities exchange-listed alternative to the products currently available in these other markets.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1 (“Amended Proposal”), is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹⁸ In particular, the Commission finds that the Amended Proposal is consistent with Section 6(b)(1) of the Exchange Act,¹¹⁹ which requires that the Exchange be so organized and have the capacity to be able to carry out the purposes of the Exchange Act and to enforce compliance by its members and persons associated with its members with the provisions of the Exchange Act, Commission rules and regulations thereunder, and its own rules; Section 6(b)(5) of the Exchange Act,¹²⁰ which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest; and not be designed to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the Exchange; and Section 6(b)(8) of the Exchange Act,¹²¹ which requires that the Exchange’s rules not impose any burden on competition not necessary or

¹¹⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹⁹ 15 U.S.C. 78f(b)(1).

¹²⁰ 15 U.S.C. 78f(b)(5).

¹²¹ 15 U.S.C. 78f(b)(8).

appropriate in furtherance of the purposes of the Act. The Commission also finds that the Amended Proposal is consistent with Section 11A of the Exchange Act,¹²² which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Exchange is a self-regulatory organization (“SRO”)¹²³ and national securities exchange that lists and trades standardized options on securities. It does so pursuant to rules that must be consistent with the Exchange Act and Commission rules, and within a regulatory framework that includes the guarantee of centralized clearing, pre- and post-trade transparency, and a disclosure framework specifically tailored to the informational needs of investors in standardized options.¹²⁴ This regulatory framework also includes the national market system (“NMS”) for securities, which, pursuant to Section 11A of the Exchange Act, is designed to link securities markets in a coordinated fashion to promote the public interest, protect investors, maintain fair and orderly markets, and ensure fair competition among exchange markets and between exchange markets and markets other than exchange markets.¹²⁵ Much of this statutory mandate is administered pursuant to NMS plans in which the Exchange is a participant, and which, among other things, provide for coordinated SRO efforts for the collection and dissemination of security option quotes and transactions;¹²⁶ facilitation of the listing and trading

¹²² 15 U.S.C. 78k-1.

¹²³ 15 U.S.C. 78c(a)(26).

¹²⁴ See Rule 9b-1 under the Act, 17 CFR 240.9b-1(d).

¹²⁵ See Section 11A of the Act, 15 U.S.C. 78k-1.

¹²⁶ See OPRA Plan available at: https://cdn.opraplan.com/documents/OPRA_Plan.pdf.

of standardized option contracts;¹²⁷ a uniform system for the selection and reservation of securities symbols;¹²⁸ intermarket order protection and prevention of locked and crossed markets;¹²⁹ a consolidated audit trail;¹³⁰ and surveillance, investigation and detection of the unlawful use of undisclosed, material information in the trading of options.¹³¹

Surveillance of listed options trading on the Exchange, as well as cross-market surveillance across the Exchange and other markets, also occurs within a multi-faceted regulatory framework outside of NMS plans. The Exchange: (i) conducts its own surveillance program for options; (ii) is an ISG member;¹³² (iii) contracts with FINRA bilaterally for certain market surveillance, investigation and examination functions; and (iv) is a party to Exchange Act Rule 17d-2 joint plans that allocate among the options exchanges and FINRA responsibilities to conduct certain options-related market surveillance that is common to the rules of all U.S. options exchanges.¹³³

Within this regulatory framework, the Exchange has proposed to list and trade binary options overlying KPIs that certain issuers of stock include in earnings-related reports filed with or furnished to the Commission (*i.e.*, Form 8-K, Form 10-Q, or Form 10-K filings, as

¹²⁷ See OLPP available at: https://www.theocc.com/getcontentasset/198bfc93-5d51-443c-9e5b-fd575a0a7d0f/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_listing_procedures_plan.pdf.

¹²⁸ See National Market System Plan for the Selection and Reservation of Securities Symbols available at: https://www.theocc.com/getcontentasset/8b48f7ee-a843-42b9-afe3-2abce857b6b7/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/nms_plan.pdf.

¹²⁹ See Linkage Plan available at: https://www.theocc.com/getcontentasset/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/options_order_protection_plan.pdf.

¹³⁰ See Consolidated Audit Trail NMS Plan available at: https://www.catnmsplan.com/sites/default/files/2026-05/LLC_Agreement_of_Consolidated_Audit_Trail_LLC-as-of-5.11.26.pdf.

¹³¹ See National Market System Plan of the Options Regulatory Surveillance Authority (“ORSA Plan”) available at: <https://www.sec.gov/files/rules/sro/nms/orsa.pdf>.

¹³² ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. See Section III, *supra*.

¹³³ See Section III, *supra*; see also Rule 17d-2 under the Act, 17 CFR 240.17d-2; <https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking/17d-2>.

applicable).¹³⁴ The proposed binary KPI options would be listed and traded on the Exchange as cash-settled, European-style, standardized options that are NMS securities subject to the protections, described above, afforded by Exchange listing and participation in the national market system.¹³⁵ The proposed binary KPI options would be subject to existing rules of the Exchange that govern options listing and trading generally,¹³⁶ and would be listed and traded on the Exchange in a substantially similar manner as existing, standardized, non-binary equity and index options and binary index options that are permitted to be listed and traded under current Exchange rules.¹³⁷ The current Exchange rules that would apply to the proposed binary KPI options include rules governing customer accounts; margin requirements;¹³⁸ trading halt procedures; auction mechanisms; market-maker appointments and quoting obligations; order types; times-in-force; and order instructions.¹³⁹ These rules, among other things, generally help provide core investor protections on the Exchange and enhanced liquidity through market-maker participation and quoting. The proposal to apply these rules and protections to the proposed binary KPI options fosters investor protection, promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system.

¹³⁴ See proposed Exchange Rule 4.80 (definition of KPI).

¹³⁵ See proposed Exchange Rules 4.80 (definition of binary KPI option) and 4.82(a); see also Rule 600(b) under the Act, 17 CFR 242.600(b).

¹³⁶ See proposed Exchange Chapter 4, Section I; Section III, supra.

¹³⁷ See Section III, supra.

¹³⁸ Pursuant to current margin rules, the proposed binary KPI options would be fully funded. See Section III, supra (citing Exchange Rule 10.3(m)).

¹³⁹ See Section III, supra. In addition, the proposed binary KPI options would be electronically traded only and would be able to trade as complex orders in the same manner as all other options that trade on the Exchange. Id. Flexible exchange option (“FLEX”) option and floor trading would not be available for the proposed binary KPI options. Id.

Proposed Exchange Rules 4.80 through 4.84 address the listing and trading of the proposed binary KPI options. These proposed rules adhere closely to existing Exchange rules regarding the standardized terms applicable to options already trading on the Exchange, including Exchange-traded equity options as well as binary index options,¹⁴⁰ and tailors them to fit the proposed binary KPI options. The Exchange also has proposed amendments to existing Exchange rules where necessary to incorporate the proposed binary KPI options. The proposed new rules and changes to existing rules address (A) terminology and option class designation, (B) standardized contract terms, (C) trading requirements, and (D) position limits and other safeguards; in addition, the Amended Proposal addresses (E) compliance with NMS plans and clearing, and (F) the product classification of the proposed binary KPI options. These matters are discussed in turn below.

A. Terminology and Option Class Designation

Proposed Exchange Rule 4.80 sets forth definitions that would be used in reference to binary KPI options. The proposed definitions are based on existing definitions used elsewhere in the Exchange's rules, including those applicable to binary security index options.¹⁴¹ The proposed defined terms explain, among other things, the KPI underlier, settlement value, exercise price, and exercise settlement amount for binary KPI options.¹⁴² In addition, the defined terms also explain when call binary KPI options and put binary KPI options would be in-, at-, or out-of-the money, and the circumstances in which holders of each such option would

¹⁴⁰ See generally Section H of the Exchange rules.

¹⁴¹ Compare proposed Exchange Rule 4.80 and existing Exchange Rule 4.70.

¹⁴² See proposed Exchange Rule 4.80; see also proposed Exchange Rule 1.1 (incorporating binary KPI options into the existing definition of "underlying security").

receive (or not receive) a payout (i.e., the exercise settlement amount) at expiration.¹⁴³ Proposed Exchange Rule 4.81 sets forth the classes of binary KPI options that the Exchange could list by delineating each issuer by name and, for each issuer, each KPI of that issuer upon which the Exchange would be permitted to list binary options. Options overlying a given issuer KPI listed in proposed Exchange Rule 4.81(a) would represent a class of options that is separate from other classes of options overlying the stock of the issuer or other KPIs of the issuer listed in proposed Exchange Rule 4.81(a).¹⁴⁴ The settlement value for each class of binary KPI option would be the value of the underlying KPI as disclosed in the issuer's earnings-related report submitted to the Commission on the applicable expiration date.¹⁴⁵

That the option underlier here would be the value of a specified KPI for a particular issuer would be novel for an option listed on a national securities exchange. Option contracts overlying particular issuer KPIs would permit more granular and varied exposure to issuer performance as reflected in the issuer's stock price than that provided by option contracts overlying the issuer's stock. The proposed binary KPI options could enable more flexible and bespoke management of positions by allowing market participants to gain exposure to, or hedge against, specific aspects of an issuer's performance. For example, the proposed binary KPI options could allow a long-term investor in the stock of an issuer to hedge against the short-term risk that the issuer's stock price might decline due to one of the KPIs in proposed Exchange Rule

¹⁴³ See proposed Exchange Rule 4.80. Proposed Exchange Rule 4.83 further specifies, with respect to the determination of the settlement value, that whether a KPI option is in-, at-, or out-of-the money is a function of the settlement value of the underlying KPI in relation to the type of binary KPI option (*i.e.*, put or call) and the exercise price. Proposed Exchange Rule 4.84 specifies that binary KPI adjustments are subject to adjustment only in accordance with and to the extent specified in the rules of the clearing corporation, and that the Exchange will announce any such adjustment and its time of effectiveness.

¹⁴⁴ See proposed Exchange Rule 4.81(b).

¹⁴⁵ See proposed Exchange Rule 4.80.

4.81, such as reduced revenue or net sales for a given quarter. In this way, the proposed binary KPI options could provide a useful investment choice and risk management tool, consistent with the protection of investors and the public interest and the removal of impediments to and the perfection of the mechanism of a free and open market and national market system.¹⁴⁶

The proposed KPI options are binary because their payout structure provides for a fixed, all-or-nothing exercise settlement amount that the option holder is entitled to receive and the option writer is obligated to pay if the option expires at- or in-the-money in the case of a call KPI option or in-the-money in the case of a put KPI option.¹⁴⁷ This non-linear payout structure distinguishes the proposed binary KPI options from traditional, non-binary security options—for which the exercise settlement amount varies relative to the degree to which the option expires in-the-money—but is not novel for exchange-traded options and does not raise new regulatory

¹⁴⁶ See, e.g., Letter from Kevin R. Edgar, Partner, Baker Hostetler LLP, on behalf of the Equity Markets Association, dated August 5, 2026, at 1 (stating that the proposal represents an evolution in the way investors utilize listed options to implement hedging strategies tied to some of the most closely watched stocks in the equity market); and Letter from Matt Billings, President, Robinhood Financial LLC and Robinhood Securities, dated August 5, 2026 (“Robinhood Letter”), at 2 (stating that the proposal addresses a genuine gap in the listed products available to investors by enabling them to hedge idiosyncratic risk embedded in discrete KPIs that existing options products cannot isolate efficiently, without disrupting a long-term position in the particular issuer).

¹⁴⁷ See proposed Exchange Rule 4.80 (definitions of binary KPI option, call binary KPI option, put binary KPI option). Under the Amended Proposal, the exercise settlement amount for a binary KPI option would be \$1, the exercise settlement value would be the value of the applicable KPI as disclosed in the applicable issuer’s earnings-related filing submitted to the Commission that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money, and the exercise price would be the value to which the settlement value of the underlying KPI is compared to determine whether the holder of a binary KPI option is entitled to the exercise settlement amount. *Id.* (definitions of exercise settlement amount, exercise settlement value, exercise price). The Exchange would designate the applicable KPI and relevant reporting period when it lists a binary KPI option. *Id.* (paragraph (a) of the definition of settlement value). In addition, if the applicable KPI is not reported or is otherwise unavailable on the expiration date (and will not be reported), settlement would occur in accordance with the rules of the clearing corporation. *Id.* (paragraph (b) of the definition of settlement value). Further, if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the settlement value (and the exercise settlement amount) of the binary KPI option would not change (as set forth in the rules of the clearing corporation). *Id.* (paragraph (c) of the definition of settlement value). Accordingly, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether the KPI is later restated by the issuer. See Section III, *supra*.

concerns. The Exchange’s rules currently permit the listing and trading of binary options overlying certain security indexes.¹⁴⁸ The rules of other options exchanges currently permit the listing and trading of binary options on individual securities.¹⁴⁹ And the Commission previously approved an Exchange proposal to list and trade binary credit default options.¹⁵⁰ For each of these products, the Commission previously considered, and approved, the same fixed, all-or-nothing (*i.e.*, binary) payout structure that would apply to the proposed KPI options. Moreover, the existing ODD, which discusses the characteristics and risks of standardized options, long has disclosed the characteristics of binary options and their associated risks.¹⁵¹

B. Standardized Contract Terms

Proposed Exchange Rule 4.82 and proposed changes to existing rules set forth the standardized contract terms that would apply to each class of binary KPI options.¹⁵² The Exchange would be permitted to designate binary KPI options as A.M.-settled or P.M.-settled depending on whether the issuer discloses earnings results before the opening of RTH or after the close of RTH, respectively, on a given trading day.¹⁵³ This structure is not novel and does

¹⁴⁸ See Exchange Rule 4.16 (Binary Options).

¹⁴⁹ See NYSE American Rule 900ByRDs; NYSE Arca Rule 5.82-O.

¹⁵⁰ See Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (order approving SR-CBOE-2006-84) (“CD Options Approval Order”).

¹⁵¹ See ODD, available at: <https://www.theocc.com/getcontentasset/a151a9ae-d784-4a15-bdeb-23a029f50b70/dfc3d011-8f63-43f6-9ed8-4b444333a1d0/riskstoc.pdf>.

¹⁵² See proposed Exchange Rule 4.82(a) through (f). See also Rule 9b-1(a)(4) under the Exchange Act (defining standardized options as options contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate); 17 CFR 240.9b-1(a)(4); Section VII, *infra*.

¹⁵³ See proposed Exchange Rule 4.82(a). The terms “Regular Trading Hours” and “RTH” mean the trading session consisting of the regular hours during which transactions in options may be effected on the Exchange and are set forth in Exchange Rule 5.1. See Exchange Rule 1.1 (definition of Regular Trading Hours and RTH). The Exchange would determine whether an issuer discloses its earnings results before the open or after the close of RTH on a given trading day based on publicly available information regarding the issuer’s disclosure practices. See Section III, *supra*.

not raise new regulatory concerns. For example, binary index options, as well as certain non-binary index options, that currently trade on the Exchange may be designated as A.M.-settled or P.M.-settled.¹⁵⁴ Although the determination of whether a binary KPI option is A.M.- or P.M.-settled would be different for the proposed binary KPI options as compared to existing binary and traditional non-binary index options currently trading on the Exchange, the proposed approach for applying these designations to the proposed binary KPI options is necessitated by, and appropriately tailored to, issuer practices with respect to disclosure of KPIs.¹⁵⁵

The Exchange would be permitted to list series of binary KPI options that expire on the date the relevant issuer discloses its earnings results for the applicable reporting period.¹⁵⁶ The expiration date would be finalized when the issuer announces the calendar date on which it will disclose its earnings results for the reporting period.¹⁵⁷ The calendar date on which an issuer will disclose its earnings results may not be known at the time a binary KPI option is listed for trading due to the issuer's disclosure practices. In that case, the expiration date initially would be specified by a qualitative reference to the expected disclosure date of the relevant KPI (e.g., the first trading day following the date of the SEC filing deadline applicable to the series) and subsequently updated with a specific calendar date after the issuer announces the date on which it will disclose its earnings results for the reporting period.¹⁵⁸

¹⁵⁴ See Exchange Rule 4.72(a). See also Section III, supra.

¹⁵⁵ See Section III, supra.

¹⁵⁶ See proposed Exchange Rule 4.82(b).

¹⁵⁷ See proposed Exchange Rule 4.82(b)(1). The Exchange would be permitted to designate binary KPI option series to expire up to 12 months from the time they are listed and at least one business week prior to expiration, and would be permitted to list up to two expirations at one time per KPI per issuer. See proposed Exchange Rules 4.82(b)(2) through (3). This approach would be consistent with current Exchange rules. See Section III, supra; see also Exchange Rules 4.5(d) and 4.72.

¹⁵⁸ See proposed Exchange Rule 4.82(b)(1); see also Section III, supra.

If the Exchange confirms that an issuer discloses a KPI prior to the expiration date, trading in the applicable binary KPI option series would cease and the expiration date would accelerate to a date on or shortly after the date of that disclosure in accordance with the rules of the clearing corporation.¹⁵⁹ If there is an unofficial disclosure of the KPI prior to the expiration date, the Exchange would be permitted to halt (and resume) trading in the applicable binary KPI option series in accordance with Exchange Rule 5.20. In certain circumstances, the expiration date for the option may accelerate in accordance with the rules of the clearing corporation and, if this occurs, trading in the binary KPI option will cease.¹⁶⁰ These provisions are designed to protect investors and the public interest by providing for the orderly processing of the proposed binary KPI options if the issuer discloses a KPI prior to the KPI option's expiration date.

An exercise price would be fixed for each binary KPI option series at an amount equal to a value of the underlying KPI divided by a scaling factor.¹⁶¹ The scaling factor would be proportional to the KPI value and designed to promote listing consistency across binary KPI option classes, conformance to the standard strike listing format for other security options listed and traded on the Exchange, and compatibility with existing Exchange systems.¹⁶² The Exchange would be permitted to list binary KPI options series with exercise prices representing negative KPI values because it is possible for certain KPIs to have negative values, such as earnings per share that are losses per share.¹⁶³ In these circumstances, the exercise price would

¹⁵⁹ See proposed Exchange Rule 5.1(b)(3)(F)(iii).

¹⁶⁰ See proposed Exchange Rule 5.1(b)(3)(F)(iv).

¹⁶¹ See proposed Exchange Rule 4.82(c)(1). Binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price of a put binary KPI option. See proposed Exchange Rule 6.20(g)(2).

¹⁶² See proposed Exchange Rule 4.82(c)(1)(A); Section III, supra.

¹⁶³ See Section III, supra.

equal the absolute value of the KPI and be scaled according to proposed Exchange Rule 4.82(c)(1)(A). If the Exchange lists binary KPI option series with both positive and negative values, they would be distinguished by the option symbol.¹⁶⁴

The proposed minimum strike intervals for the scaled exercise (strike) prices are generally consistent with current Exchange rules for other options, which provide for larger strike intervals as strike price values increase.¹⁶⁵ The Exchange would be permitted to open for trading one or more binary KPI option series with a fixed KPI value as the strike price, with approximately the same number of strike prices being opened above and below the at-the-money KPI value at the time the binary KPI options series are opened.¹⁶⁶ The strike prices must be “reasonably close” to the at-the-money KPI value, as defined in proposed Exchange Rule 4.82(d).¹⁶⁷ After initial binary KPI option series are listed, the Exchange would be permitted to list additional series when necessary to maintain a fair and orderly market or to meet customer demand, subject to the “reasonably close” requirement.¹⁶⁸ The Exchange has proposed

¹⁶⁴ See proposed Exchange Rule 4.82(c)(1)(B); Section III, supra. The Exchange states that this would be similar to current Exchange practice for index options for which the Exchange lists both A.M.-settled and P.M.-settled series in that whether a series is A.M.- or P.M.-settled is built into the symbol, each of which could have the same strike prices listed at the same time. Whether a symbol reflects a positive or negative value would be set forth in contract specifications as well as the reference data file for the specific binary KPI option on the Exchange’s public website. See Section III, supra.

¹⁶⁵ See proposed Exchange Rule 4.82(c)(2); Section III, supra.

¹⁶⁶ See proposed Exchange Rule 4.82(d). The at-the-money value would be the value of the KPI in the issuer’s most recent earnings-related disclosure, the issuer’s disclosed estimate of the KPI for the next reporting period, or analysts’ consensus estimate as reported by major market vendors, as the Exchange deems appropriate based on market information. Id.

¹⁶⁷ See proposed Exchange Rule 4.82(d). A strike price is “reasonably close” to the at-the-money KPI value if: (1) for KPIs less than or equal to 1, it is no more than 2; (2) for KPIs less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (3) for KPIs greater than 10, it is no more than 30% above or below the at-the-money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) provided demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Id.

¹⁶⁸ See proposed Exchange Rule 4.82(e) through (e)(1).

additional requirements that address when an additional series is opened for an expiration before the issuer has disclosed the KPI value for the reporting period immediately preceding the reporting period for the additional series.¹⁶⁹ The Exchange states that it intends to apply its standard strike listing practices to the proposed binary KPI options, and that it generally will list strikes at wider intervals as they move farther away from the at-the-money value, and at more granular intervals as they move closer to the at-the-money value.¹⁷⁰ The Exchange also generally delists granular strikes that are deeply out-of-the-money and have no open interest if the Exchange determines they are sufficiently covered by wider strike intervals that are close in value.¹⁷¹ The proposed strike price intervals are designed to protect investors and the public interest by providing investors with flexibility in their hedging and investing decisions using binary KPI options.

The proposed rules setting forth contract terms for settlement, expirations, exercise prices, and series listing for the proposed binary KPI options are based on existing Exchange rules that establish standardized contract terms for options currently listed and traded on the Exchange.¹⁷² In addition, the terms and any changes thereto would be described in Exchange notices, technical specifications, and contract specifications, all of which are posted on the

¹⁶⁹ See proposed Exchange Rule 4.82(e)(1). The Exchange states that listing binary KPI options for a new reporting period prior to the expiration of then-listed binary KPI options for the immediately preceding reporting period would permit investors to roll positions from one expiration to the next. See Section III, supra. The Exchange may list additional series using updated at-the-money KPI values, such as if the Exchange lists binary KPI options series for an expiration before the issuer has disclosed the KPI value for the immediately preceding reporting period and that value is then disclosed, or if the issuer or major market data vendors publish estimates of the KPI value. See proposed Exchange Rule 4.82(e)(1). This is consistent with current Exchange practice if there is a substantial change in the price of an underlying security or value of an underlying index. See Section III, supra; see also Exchange Rule 4.5(d)(4).

¹⁷⁰ See Section III, supra.

¹⁷¹ Id.

¹⁷² See, e.g., Exchange Rule 4.5 (Series of Option Contracts Open for Trading).

Exchange’s website and available to all investors.¹⁷³ Taken together, this approach is consistent with the protection of investors and the public interest because it is designed to clearly describe the terms pursuant to which binary KPI options would trade on the Exchange and enable investors to trade them in the manner in which they are accustomed to trading existing options on the Exchange. The proposed contract terms also are consistent with the promotion of just and equitable principles of trade because the limitations they impose—such as minimum strike intervals and strikes that must be “reasonably close” to the at-the-money KPI value—are designed to ensure that each listed KPI option series provides distinct and meaningful exposure to one of the proposed issuer KPIs. Further, the proposed standardized terms establish a clear, workable framework for the listing and trading of binary KPI options that may be replicated by other exchanges seeking to offer binary KPI options. In this way, the proposed terms are designed to help facilitate multi-listing of the proposed binary KPI options and are consistent with the removal of impediments to and the perfection of the mechanism of a free and open market and national market system, and designed not to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Trading Requirements

The Exchange has proposed changes to existing Exchange rules to accommodate the trading of binary KPI options. These proposed rule changes incorporate the proposed binary KPI options into existing Exchange requirements and mechanisms regarding trading hours, trading cessation, bids and offers, minimum trading increments, opening auctions, and order and quote price protection and risk controls.¹⁷⁴ By proposing to apply existing Exchange trading

¹⁷³ See Section III, *supra*.

¹⁷⁴ See proposed Exchange Rules 5.1(b)(3)(F) (specifying regular trading hours for binary KPI options and the

functionality, requirements and protections to binary KPI options, the Amended Proposal is designed to help assure fair and orderly Exchange trading in binary KPI options, and is consistent with the protection of investors and the public interest, the promotion of just and equitable principles of trade, and the removal of impediments to and perfection of a free and open market and the national market system.

D. Position Limits and Other Safeguards

Position limits serve as a regulatory tool designed to deter manipulative schemes and mitigate the risk of adverse market impact surrounding the use of options. Since the inception of standardized options trading, the options exchanges have had rules limiting the aggregate number of options contracts that a member or customer may hold or exercise.¹⁷⁵ Proposed Exchange Rule 8.36 would provide that, in determining compliance with Exchange Rule 8.30, the position limit for binary KPI options is 25,000 standard option contracts, and 100 binary KPI options contracts equal one standard option contract.¹⁷⁶ Proposed Exchange Rule 8.36 also would provide that, for position limit purposes, a given binary KPI option position would not be aggregated with: (i) a position with a different expiration date for the same binary KPI option for

last day of trading for P.M.-settled and A.M.-settled binary KPI options); 5.3(c)(3) (addressing bids and offers for a binary option with a multiplier other than 100); 5.4(c)(1) (providing that the minimum increment for binary KPI options (and binary index options) is \$0.01); 5.31(d)(1)(D) (providing that the opening rotation for binary KPI options is initiated at 9:30 a.m.); 5.34(d) (stating that, in addition to the order and quote price protection mechanisms and risk controls set forth in the rule, the Exchange may apply a maximum execution price protection for binary options on a class basis). In addition, proposed Exchange Rule 6.5, Int. .10 states that Exchange Rule 6.5 (nullification and adjustment of options transactions including obvious errors) does not apply to binary KPI options. The Exchange states that the proposed maximum execution price protection in proposed Exchange Rule 5.34(d) may prevent executions at potentially erroneous prices and obviates the need for an obvious error process for binary KPI options. See Section III, supra. The Exchange also states that the obvious error rule's framework of evaluating whether an execution price deviates from a theoretical value is incompatible with binary KPI options in light of their fixed payout structure. Id.

¹⁷⁵ See, e.g., Securities Exchange Act Release No. 45236 (Jan. 4, 2002), 67 FR 1378 (Jan.10, 2002) (SR-Amex-2001-42).

¹⁷⁶ See proposed Exchange Rule 8.36(a)(3).

the same issuer;¹⁷⁷ (ii) a position in a different binary KPI option for the same issuer;¹⁷⁸ or (iii) a position in a non-binary option overlying the stock of the issuer.¹⁷⁹

The Exchange's proposed position limits and related safeguards for binary KPI options reflect a reasonable approach to address the potential for manipulation of binary KPI options, which have not been previously listed on the Exchange, and are therefore reasonably designed to protect investors and the public interest. And this approach is consistent with longstanding listed options market requirements for equity option position limits. The Commission approved the Exchange's current equity option position limits, set forth in Exchange Rule 8.30, in 2005, and these position limits subsequently were replicated by other options exchanges.¹⁸⁰ A position limit of 25,000 contracts is the most conservative limit currently set forth in Exchange Rule 8.30 (and the identical rules of other exchanges).¹⁸¹ Because of the difference in contract multipliers—equity options have a contract multiplier of 100 and the proposed binary KPI options have a contract multiplier of one—counting 100 binary KPI contracts as one standard option contract for purposes of position limits would calibrate position limits appropriately so

¹⁷⁷ See proposed Exchange Rule 8.36(b)(2).

¹⁷⁸ Id.

¹⁷⁹ See proposed Exchange Rule 8.36(c)(2).

¹⁸⁰ See, e.g., Securities Exchange Act Release No. 51244 (Feb. 23, 2005), 70 FR 10010 (Mar. 1, 2005) (File No. SR-CBOE-2003-30) (order approving two option position and exercise limit programs on a pilot basis); and Securities Exchange Act Release No. 57352 (Feb. 19, 2007), 73 FR 10076 (Feb. 25, 2008) (File No. SR-CBOE-2008-007) (order granting permanent approval of two option position and exercise limit pilot programs). See also Securities Exchange Act Release Nos. 57417 (Mar. 3, 2008), 47 FR 12788 (Mar. 10, 2008) (notice of filing and immediate effectiveness of File No. SR-NYSEArca-2008-26); 57415 (Mar. 3, 2008), 46 FR 12479 (Mar. 7, 2008) (notice of filing and immediate effectiveness of File No. SR-Amex-2008-16); and 57416 (Mar. 8, 2008), 46 FR 12489 (Mar. 7, 2008) (notice of filing and immediate effectiveness of File No. SR-ISE-2008-20).

¹⁸¹ See Exchange Rule 8.30 Int. .02. The Exchange states that it imposes a threshold position limit of 25,000 standard contracts under Exchange Rule 8.30 when there is no prior trading activity to support a higher limit under the rule. The Exchange further states that it believes the proposed 25,000-contract limit is appropriate because binary KPI options have not yet been listed on the Exchange, and the Commission has previously determined that a position limit of 25,000 standard option contracts is appropriate when there is no prior trading activity in a specific instrument. See Section III, supra.

that investors may hold positions in binary KPI options of an issuer that are proportional to the number of contracts they may hold in options on the stock of that issuer. Moreover, current Exchange rules do not require aggregation of equity option positions across different classes for position limit purposes, just as proposed Exchange Rule 8.36 would not require aggregation across different binary KPI option classes.¹⁸² Further, pursuant to the rules of other exchanges, a 25,000-contract position limit applies to binary equity options without aggregation with other options positions overlying the same or similar security.¹⁸³

In addition, under proposed Exchange Rule 8.36(e)(2), a binary KPI option short put position coupled with a binary KPI option short call position held by a registered market-maker¹⁸⁴ would be exempt from position limits regardless of the strike prices of the binary KPI options.¹⁸⁵ The Exchange states that, given the retail nature of binary KPI options, the Exchange expects investors primarily to buy binary KPI options, and as a result, liquidity providers may

¹⁸² Pursuant to proposed Exchange Rule 4.81(b), binary KPI options are a separate class from other options overlying the stock of the issuer and are a separate class from other binary KPI options with different underlying KPIs for the same issuer. Thus, proposed Exchange Rule 8.36's non-aggregation of a given binary KPI option position with a position in a different binary KPI option for the same issuer or a position in a non-binary option overlying the stock of the issuer amounts to non-aggregation across binary KPI option classes. Any position in multiple classes of binary KPI options would be subject to the 25,000-contract per-class position limit on a non-aggregated basis, since each binary KPI option class would provide exposure to, or a hedge against, a specific aspect of issuer performance. With regard to the proposed non-aggregation of a given binary KPI option position with a position with a different expiration date for the same binary KPI option for the same issuer, the Exchange may list, at most, only two expirations at one time for each proposed binary KPI option. Moreover, each binary KPI option would be European-style exercise, each expiration would be linked to a particular reporting period, and each of the potentially two expirations listed at a given time would correspond to different earnings-related filings submitted to the Commission for different reporting periods. See proposed Exchange Rule 4.82(b)(2).

¹⁸³ See NYSE American Rule 904ByRDs; NYSE Arca Rule 5.86-O; Securities Exchange Release No. 56251 (Aug. 14, 2007), 72 FR 46523 (Aug. 20, 2007).

¹⁸⁴ See Exchange Rule 1.1 (defining the term "Market-Maker" as "a Trading Permit Holder registered with the Exchange pursuant to Rule 3.52 for the purpose of making markets in option contracts traded on the Exchange and that has the rights and responsibilities set forth in Chapter 5, Section D of the Rules").

¹⁸⁵ See proposed Exchange Rule 8.36(e)(2). The Exchange also has proposed rule changes where necessary to distinguish binary index options from binary KPI options. See proposed Exchange Rules 6.20(g), 8.36, 8.43.

amass short positions to facilitate these purchases. Short call and short put positions are on opposite sides of the market, and thus, in the aggregate, do not represent unidirectional exposure to a given KPI underlier. Without this proposed rule, each such short position would individually be subject to the 25,000-contract position limit,¹⁸⁶ which could inhibit market-makers' ability to provide liquidity in binary KPI options.¹⁸⁷ By exempting market-makers' offsetting short positions in binary KPI options from position limits, proposed Exchange Rule 8.36(e)(2) is narrowly designed to facilitate liquidity provision in binary KPI options consistent with the maintenance of fair and orderly markets, the protection of investors and the public interest, and the removal of impediments to and perfection of the mechanism of a free and open market and a national market system.

By applying and appropriately tailoring to binary KPI options the well-established and most conservative equity option position limit set forth in Exchange Rule 8.30, proposed Exchange Rule 8.36 is designed to protect investors and the public interest and to prevent fraud and manipulation, consistent with Section 6(b)(5) of the Act. The Exchange's proposed approach to position limits for binary KPI options appropriately accounts for the fact that binary KPI options have not previously been listed on the Exchange. It also strikes an appropriate balance between, on the one hand, limiting incentives to manipulate that could arise from permitting excessively large binary KPI option positions and, on the other hand, unnecessarily

¹⁸⁶ See Exchange Rule 8.30 Int. .01(b).

¹⁸⁷ Exchange Rule 8.30 sets forth equity hedge exemptions to standard position limits, which, among other things, may help facilitate market making and liquidity provision in traditional equity options. Pursuant to current Exchange Rule 8.36(f), which the Exchange has proposed to renumber as Exchange Rule 8.36(e), binary options are not subject to the hedge exemptions to standard position limits found in Exchange Rule 8.30. See also Section III, *supra*. As such, proposed Exchange Rule 8.36(e)(2) provides an alternative approach to help facilitate market maker liquidity provision in binary KPI options.

discouraging or preventing participation in binary KPI option markets by institutions and other investors or market participants with substantial hedging or other trading needs.

Other important Exchange safeguards that would be applicable to binary KPI option positions are designed to help to protect investors and to prevent fraud and manipulation. Pursuant to the Exchange's current margin rules, binary KPI option positions must be fully funded.¹⁸⁸ In addition, the customer and position reporting requirements in Exchange Rule 8.43 would apply to binary KPI options, such that TPHs would be required to report to the Exchange, among other things, certain customer and position information for any customer who, acting alone or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts of any single class of option contracts dealt in on the Exchange.¹⁸⁹ This should enable the Exchange to monitor customer binary KPI positions effectively and detect any accumulation of positions that may approach or exceed applicable limits.¹⁹⁰

Importantly, the Exchange's surveillance mechanisms will apply to binary KPI options. These mechanisms are designed to help protect investors and prevent fraud and manipulation, and, in particular, to help to deter insider trading, consistent with Sections 6(b)(1) and 6(b)(5) of the Act.¹⁹¹ Listing and trading binary KPI options as securities options on a registered national securities exchange subjects trading activity to existing securities market surveillance

¹⁸⁸ See Exchange Rule 10.3(m); see also Section III, *supra*.

¹⁸⁹ See Exchange Rule 8.43(a). 100 binary KPI option contracts would equal one standard option contract for purposes of computing reportable binary option positions to the Exchange. See proposed Exchange Rule 8.43(f). In addition, Exchange Rule 8.43(c) requires each TPH to report to the Exchange any instance in which the TPH has reason to believe that a customer, acting alone or in concert with others, has exceeded or is attempting to exceed the position limits.

¹⁹⁰ See Section III, *supra*.

¹⁹¹ 15 U.S.C. 78f(b)(1), 78f(b)(5).

mechanisms for, among other things, manipulative trading and insider trading, and affords investors the full protection of the federal securities laws.¹⁹² Moreover, the Exchange represents that it has an adequate options surveillance program in place, which is designed to deter and detect possible manipulative behavior that might arise from listing and trading the proposed binary KPI options.¹⁹³ The Exchange states that it intends to apply the same surveillance program procedures to binary KPI options as it does for other options products.¹⁹⁴ Further, the Exchange represents that it will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options, including cooperation with FINRA to implement insider trading surveillances to incorporate the unique characteristics of binary KPI options.¹⁹⁵ The Exchange also states that it will report any information regarding binary KPI options required to be reported to the CAT in the same manner it reports this information to the CAT for all other options the Exchange lists.¹⁹⁶ Accordingly, the Commission finds that these mechanisms will sufficiently protect investors and prevent fraud and manipulation, and, in particular, help to deter insider trading, consistent with Sections 6(b)(1) and 6(b)(5) of the Act.

E. Compliance with NMS Plans and Clearing

¹⁹² See Section III, supra.

¹⁹³ Id.

¹⁹⁴ Id. As noted supra in this Section IV, the Exchange: (i) is a participant in the ORSA Plan, which is an NMS plan pursuant to which SROs coordinate regarding surveillance, investigation and detection of the unlawful use of undisclosed, material information in the trading of options; (ii) conducts its own surveillance program for options; (iii) is an ISG member; (iv) contracts with FINRA bilaterally for certain market surveillance, investigation and examination functions; and (v) is a party to Rule 17d-2 joint plans that allocate among the options exchanges and FINRA responsibilities to conduct certain options-related market surveillance that is common to the rules of all options exchanges.

¹⁹⁵ See Section III, supra.

¹⁹⁶ Id. The Exchange states that CAT reporting requirements would apply to broker-dealers with respect to binary KPI options in the same manner as they apply to any other options the Exchange lists. The Exchange understands from FINRA CAT that there will be no changes needed to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to the CAT. Id.

The Exchange is positioned to be able to implement the listing and trading of binary KPI options consistent with applicable NMS plans. In this regard, the Exchange states that: (i) it will report binary KPI option quotation and transaction price information to OPRA and CAT-required information to the CAT in the same manner it reports this information to OPRA and the CAT, respectively, for all other options that the Exchange lists; (ii) it understands from OPRA and FINRA CAT, the administrator of the CAT, that no technical changes are required to accommodate reporting to OPRA or the CAT, respectively, information regarding binary KPI options and that, if later required by OPRA or FINRA CAT, the Exchange will adhere to any technical requirements that OPRA or FINRA CAT each deems necessary to accommodate binary KPI options; (iii) it understands from OPRA that OPRA will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists;¹⁹⁷ (iv) it will take all steps necessary and within its authority to amend certain provisions of the OPRA plan that relate to volume specifically cleared by the OCC to reflect all listed options volume cleared by a registered clearing agency, including options volume cleared by CCUS and binary KPI options;¹⁹⁸ and (v) in accordance with the Linkage Plan and Exchange Rules 5.65 through 5.67, the Exchange's system is designed, at all times, to prevent trade-throughs and avoid

¹⁹⁷ The Exchange states that it intends to follow OPRA's standard capacity monitoring process for binary KPI options, in accordance with OPRA instructions, including the submission of quarterly capacity projections. The Exchange also states that it does not believe that TPHs will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange's automated system. Id.

¹⁹⁸ The Exchange states that, if the OPRA plan is not amended with respect to the allocation of costs and resources to include CCUS volume, the Exchange will be responsible for additional costs associated with any additional OPRA capacity the Exchange may need as a result of the listing and trading of binary options but will receive no additional OPRA revenue for those trades. Id.

displaying locked/crossed markets, and in the event that binary KPI options become multi-listed options, Users may designate an order for routing (or not) pursuant to Exchange Rule 5.36.¹⁹⁹

The Exchange intends to clear binary KPI options through CCUS.²⁰⁰ To accomplish this, the Exchange has separately filed with the Commission an application for temporary registration of CCUS as a registered clearing agency under Section 17A of the Act.²⁰¹ The Exchange also has submitted to the Commission an options disclosure document describing the characteristics and risks associated with the trading of binary KPI options in accordance with Rule 9b-1 under the Act.²⁰² The Exchange represents that it will not list for trading binary KPI options until all applicable filings and documents of CCUS related to binary KPI options being cleared through CCUS are approved by the Commission or effective after review by the Commission, as applicable.²⁰³

In addition, with respect to the OLPP, which sets forth procedures to facilitate the listing and trading of standardized options, the Exchange states that it will take all steps necessary and within its authority to amend the OLPP to reflect listing procedures applicable to options cleared by CCUS, including binary KPI options.²⁰⁴ The Exchange also acknowledges that the OLPP

¹⁹⁹ Id.

²⁰⁰ Id.

²⁰¹ Id.; 15 U.S.C. 78q-1.

²⁰² See Section III, supra; 17 CFR 240.9b-1.

²⁰³ See Section III, supra. Specifically, the Exchange represents that, upon any approval of CCUS's temporary registration application, the Exchange will submit a separate rule filing to reflect that binary KPI options will be initially cleared through CCUS. The Exchange also states that it understands that FINRA will submit a separate rule filing in due course to reflect the clearance of options through CCUS and potentially make other changes to contemplate the trading of binary KPI options, and understands from FINRA that existing FINRA rules do not preclude a FINRA member from trading binary KPI options. Id.

²⁰⁴ The Exchange states that, if the OLPP is not amended to apply these procedures to CCUS before the Exchange begins listing binary KPI options, there will be no impact on the listing and trading of binary KPI options, as the Exchange will certify and list binary KPI options following the same procedures at CCUS as it does for other options at OCC. Id.

will require amendment if, subsequent to this order and any Commission approval of CCUS's clearing agency registration application, OCC submits a proposal to the Commission to amend its rules to clear binary KPI options.²⁰⁵ Certain provisions of the current OLPP reference only OCC as a clearing agency for listed options and would need to be updated to account for the fact that both CCUS and OCC could clear binary KPI options.²⁰⁶ Accordingly, the Exchange has agreed that it will file with the Commission a proposed amendment to the OLPP (pursuant to Rule 608 of Regulation NMS)²⁰⁷ no more than 10 business days following Commission publication of a notice of filing of a proposed rule change by OCC to amend its rules to clear binary KPI options, and will operate in good faith in cooperating with the Commission, the OCC and CCUS to ensure such amendment reflects the changes referenced above as well as any additional changes the Commission may deem necessary or appropriate in light of the foregoing in the interest of maintaining fair and orderly markets and the protection of investors.²⁰⁸

These commitments and undertakings by the Exchange are designed to facilitate fair and orderly trading of the proposed binary KPI options, incorporation of the proposed binary KPI options into the national market system as NMS securities, and the potential for the multi-listing of binary KPI options across options exchanges. Accordingly, these commitments and undertakings are designed: (i) to help ensure that the Exchange is so organized and has the capacity to comply with the provisions of the Act, Commission rules and regulations thereunder, and its own rules;²⁰⁹ (ii) to remove impediments to a free and open market and perfect the

²⁰⁵ Id.

²⁰⁶ Id.

²⁰⁷ 17 CFR 242.608.

²⁰⁸ See Section III, supra.

²⁰⁹ See Section 6(b)(1) of the Exchange Act.

mechanism of a national market system, and to protect investors and the public interest;²¹⁰ and (iii) not to impose an unnecessary or inappropriate burden on competition.²¹¹

Overall, as discussed above, the Amended Proposal would apply to binary KPI options the standardized terms and other Exchange requirements and protections that typically apply to exchange-traded standardized options—tailored only as necessary to address this new Exchange-traded option product—and would do so subject to and in furtherance of the requirements and investor protections that are part of the broader, well-established regulatory framework and national market system for NMS securities that are options.

Commenters state that the Commission should not act on the Amended Proposal before any Commission approval of CCUS as a registered clearing agency, any amendments to the OPRA plan and OLPP have been approved, and any updates to relevant FINRA rules have been approved because these occurrences should precede the Exchange’s implementation of the Amended Proposal.²¹² An exchange’s implementation of a proposed rule change filed with the Commission pursuant to Section 19(b)(2) of the Exchange Act is a separate matter from, and may occur only after, Commission action to approve the proposed rule change.²¹³ That other regulatory processes—such as centralized clearing—must be or become available before an exchange may implement a proposed rule change does not compel the Commission to delay its action on the proposed rule change if the Commission finds that the proposed rule change is

²¹⁰ See Section 6(b)(5) of the Exchange Act.

²¹¹ See Section 6(b)(8) of the Exchange Act.

²¹² See Letter from Stefan Scropp, Senior Regulatory Counsel, Paradigm Operations LP, dated August 5, 2026 (“Paradigm Letter”), at 4-6 (referring to CCUS’s clearing application, and amendments to the OPRA plan and OLPP); Letter from Thomas Chippas, CEO, Rothera Exchange and Clearing LLC, dated August 5, 2026 (“Rothera Letter”), at 2-3 (referring to CCUS’s clearing application); Letter from Sudhir Jain, Chief Compliance Officer, Kalshi Inc., dated August 5, 2026 (“Kalshi Letter”), at 2-5 (referring to CCUS’s clearing application, amendments to the OPRA plan and OLPP, and FINRA rule amendments).

²¹³ See 15 U.S.C. 78s(b)(1).

consistent with the Exchange Act; in fact, the Commission must approve the proposed rule change if it makes such a finding. Because, as demonstrated by the discussion herein, the Commission finds that the Amended Proposal is consistent with the Exchange Act, the Commission is acting to approve the Amended Proposal, as it must, consistent with Section 19 of the Exchange Act.²¹⁴

F. Product Classification

Section 3(a)(10) of the Exchange Act defines “security” to include, in part, “any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof).”²¹⁵ The proposed binary options overlying specific KPIs reported by specific issuers of stock, as the Exchange proposes to structure, list, and trade them, may be categorized as (i) options on a (ii) security, consistent with the definition of “security” in Section 3(a)(10) of the Exchange Act.²¹⁶ This Commission finding speaks solely to the listing and trading of these specific binary option contracts on a securities exchange that lists and trades standardized options on securities in compliance with the securities laws.

First, the specific binary KPI options proposed by the Exchange may be categorized as options. In the absence of a definition of the term “option” in the Exchange Act or Commission rules, the Commission’s analysis as to whether an exchange-proposed product is an option

²¹⁴ See 15 U.S.C. 78s(b)(2)(C) (stating that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a self-regulatory organization); see also, e.g., Securities Exchange Act Release No. 105569 (May 28, 2026), 91 FR 33005 (June 2, 2026) (order approving Exchange proposal for equity option extended trading sessions prior to effectiveness of OCC rule filing necessary for Exchange implementation of the proposal).

²¹⁵ 15 U.S.C. 78c(a)(10).

²¹⁶ See Exchange Act section 3(a)(10), 15 U.S.C. 78c(a)(10). Security options are included within the definition of the term “security.” Id.

previously has focused on whether the facts and circumstances related to the product reflect the presence of typical characteristics of options.²¹⁷ Such characteristics are present here. As described above, the proposed binary KPI options would be listed and traded on the Exchange pursuant to rules that set forth the type of standardized terms typically applied to exchange-listed security options and that apply to security options already listed and traded on the Exchange. These terms include a traditional option call and put contract structure, each of which may be bought or sold, as well as standardized terms for exercise prices, expirations, series listing, and settlement. Through these standardized terms, the proposed binary KPI options present as option contracts, including that the buyer of a binary KPI option contract pays to the seller a nonrefundable premium, has rights but no further obligations under the contract, and has no further risk exposure. Furthermore, the trading of binary KPI options as standardized options on the Exchange, if implemented, would occur subject to broader regulatory features typical of standardized securities option trading. One such feature would be centralized clearing of binary KPI option transactions by a securities options clearing agency that is registered with the Commission pursuant to the Exchange Act. Another such feature would be an options disclosure document, prepared pursuant to Rule 9b-1 under the Exchange Act, which would disclose the risks and characteristics of the proposed binary KPI options, and which broker-dealers would be

²¹⁷ See, e.g., CD Options Approval Order, 72 FR at 32375 and n. 34. There is a definition of the term “option” in the Commodity Exchange Act, which also suggests that the product classification analysis must focus on the presence (or not) of characteristics emblematic of options. Specifically, in pertinent part, the CEA defines “option” as an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an option. See 7 U.S.C. 1a(36) (internal quotations omitted). One commenter states that the Commission’s determination of whether the Exchange’s proposed binary KPI options are options should be based on the specific structure proposed, without making a determination about other products that may be structured differently. See Letter from DJ Adams, Chief Executive Officer, Thesis Market, Inc., dated September 9, 2026 (“Thesis Market Letter”).

required to provide to any given customer before accepting an order from the customer to purchase or sell a binary KPI option contract.²¹⁸

Second, the specific binary KPI options as proposed by the Exchange may be categorized as options on a security.²¹⁹ The binary KPI options included in the Amended Proposal are limited to issuers with a class of equity securities that are listed for trading on a national securities exchange. The option prong of the “security” definition includes any option on a security (including any interest therein or based on the value thereof).²²⁰ As the Commission has stated before, the Commission interprets “based on the value [of a security or securities]” in the option prong of Section 3(a)(10) of the Exchange Act “to include any option whose pricing in the secondary market moves in relation to the value of the underlying security or securities of the option in question.”²²¹ In this case, each proposed binary KPI option is based on the issuer’s disclosure of the KPI in the issuer’s earnings-related reports filed with or furnished to the Commission (including KPIs such as earnings, sales, revenue, operating margin, net income, interest income, credit losses, trading volume, and free cash flow).²²² It is well-established that the value of an issuer’s stock moves in relation to issuer performance disclosures like those

²¹⁸ See 17 CFR 240.9b-1. One commenter states that the Exchange’s proposed binary KPI options are structurally distinct from KPI derivative instruments that trade on other markets in that the proposed binary KPI options would be standardized put and call classes with graduated strike ladders and clearing through a Commission-registered clearing agency. See Paradigm Letter at 6.

²¹⁹ One commenter agrees with the Exchange’s analysis that binary KPI options offered on a national securities exchange are securities options. See Robinhood Letter at 2 n.2; Section III, *supra*.

²²⁰ The CEA also excludes from the definition of “swap” (and by extension, the definition of “security-based swap”) options “on any security, certificate of deposit, or group or index of securities, *including any interest therein or based on the value thereof*, that is subject to” the Securities Act of 1933 or the Exchange Act) (emphasis added). See 7 U.S.C. 1a(47)(B)(iii).

²²¹ See CD Options Approval Order, 72 FR at 32375.

²²² See proposed Exchange Rule 4.81

underlying the proposed binary KPI options.²²³ Accordingly, in this case, each Cboe-proposed binary KPI option is correlated with the value of the issuer’s stock,²²⁴ and it is expected that the price of each Cboe-proposed binary KPI option will move in relation to the value of the issuer’s stock during the life of the option contract.²²⁵

One commenter states that, unlike the standardized binary options that currently trade, the proposed binary KPI options do not “settle” on the price or value of a security.²²⁶ The

²²³ See, e.g., Ball, R., Brown, P., An Empirical Evaluation of Accounting Income Numbers, Journal of Accounting Research, Autumn 1968; Kothari, S.P., Capital Markets Research in Accounting, Journal of Accounting and Economics, Sept. 2001; Kothari, S.P., Schonberger, B., Wasley, C. et al., The First Half-Century of Empirical Capital Markets Research in Accounting in Pictures, Review of Accounting Studies, Vol. 30, pp. 3111–3176 (2025); Berger, P., Hann, R., The Impact of SFAS No. 131 on Information and Monitoring, Journal of Accounting Research, Vol. 41, pp. 163-223 (2003); Wilson, G., The Relative Information Context of Accruals and Cash Flows: Combined Evidence at the Earnings Announcement and Annual Report Release Date, Journal of Accounting Research, Vol. 24, pp. 165-200 (1986); Beaver, W., McNichols, M., Wang, Z., Increased Market Response to Earnings Announcements in the 21st Century: An Empirical Investigation, Journal of Accounting and Economics, Vol. 69, Issue 1 (2020); Givoly, D., Li, Y., Lourie, B., Nekrasov, A., Key Performance Indicators as Supplements to Earnings: Incremental Informativeness, Demand Factors, Measurement Issues, and Properties of their Forecasts, Review of Accounting Studies, Vol. 24, pp. 1147-1183 (2019).

²²⁴ See CD Options Approval Order, 72 FR at 32376 (in finding that credit default options are options based on the value of a security and therefore securities, the Commission stated that it “expects that there will be a close empirical correlation between the pricing of a specific credit default option during the life of the contract and the yield spread of the Reference Obligation or other Relevant Obligations of that credit default option”).

²²⁵ See note 223, *supra*. Information that moves the value of an issuer’s stock will move the value of options on the issuer’s stock because the value of a stock option is based largely on the value of the underlying stock. The proposed KPIs measure the performance of the issuer and help to determine the value of the issuer’s stock. Accordingly, the value of the proposed KPI options will be correlated with each other and with the value of the issuer’s stock. At the same time, as discussed above (*see* Section IV.D, *supra*), a given binary KPI option position would not be aggregated with a position in an option overlying the stock of issuer. This would not enable market participants to utilize binary KPI options to circumvent existing position limits for options on the stock of an issuer because binary KPI options and options on the stock of an issuer are options on different underliers that provide related, but different, exposures. Purchasing options on one or more KPIs of an issuer would not provide a market participant with a means to acquire additional stock of the issuer, nor would the exercise of such options affect the price of the issuer’s stock. Rather, the proposed KPI options will provide exposure to, or a hedge against, specific aspects of an issuer’s performance.

²²⁶ See Rothera Letter at 2. Another commenter states that the Exchange’s proposal “relies principally” on the CD Options Approval Order to support its conclusion that binary KPI options are securities options, and questions the viability of such reliance because the CD Options Approval Order preceded Congress’ enactment of the Dodd-Frank Act. See Kalshi Letter at 3. Cboe states, in response, that the CD Options Approval Order is consistent with a finding here that the proposed binary KPI options are securities as defined in Section 3(a)(10) of the Act, and points out that credit default options, in addition to binary

commenter suggests that because the Commission and the CFTC have issued a joint request for comment related to the further definition of “swap” and “security-based swap”²²⁷ the Commission should not approve the Amended Proposal at this time.²²⁸ This order does not address what may be similar products with the same underlying KPIs as the binary options described in the order structured in different ways.²²⁹ The determination of when a product falls within Exchange Act Section 3(a)(10) (including whether it is based on a security, including any interest therein and based on the value thereof) is within the Commission’s statutory authority. As detailed above, the proposed product meets the definition of an option on a security, and the Commission finds that the Amended Proposal is consistent with the Act. As such, as directed by the statute, the Commission must approve the Exchange’s rule filing.²³⁰

The Exchange’s proposed binary KPI options may be listed as options on a security also because they are options on an interest in, or based on the value of an interest in, a security or securities within the meaning of Section 3(a)(10) of the Exchange Act. As the Commission has

options on the S&P 500 Index and Cboe Volatility Index, traded on the Exchange as standardized options subsequent to the enactment of the Dodd-Frank Act. See Letter from Laura G. Dickman, Vice President, Associate General Counsel, Cboe Exchange, Inc., dated August 24, 2026, at 2-3. Putting aside whether the commenter’s characterization of the Exchange’s proposal is apt, the Commission’s findings herein are based on the Commission’s analysis of the Amended Proposal’s consistency with the Exchange Act. The Commission’s prior findings in the CD Options Approval Order are instructive, but not dispositive, to the Commission’s analysis and findings here.

²²⁷ See Joint Request for Comment on Further Definition of “Swap” and “Security-Based Swap” and on Alternative Compliance, Release Nos., 33-11424; 34-105735; File No. S7-2026-2 (June 18, 2026), 91 FR 37873 (June 24, 2026).

²²⁸ See Rothera Letter at 2; see also Kalshi Letter at 2-4; Paradigm Letter at 1-4.

²²⁹ This order does not foreclose other markets from structuring derivative instruments overlying KPIs as other products.

²³⁰ See 15 U.S.C. 78s(b)(2)(C) (stating that the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a self-regulatory organization). See also Thesis Market Letter at 2 (“the SEC is required under the [Exchange Act] and its regulations to act on the record before it and on the law and regulations as they stand today, not as they might be in the future.”). Moreover, the comment period for the joint request has closed.

previously stated, “the concept of an ‘interest in’ a security plainly includes rights generating a pecuniary interest in a security, such as the right to a dividend payment or bond (coupon) payment.”²³¹ Further, “merely because the option does not transfer ownership of the interest or right in a security—but instead becomes in-the-money and provides a cash payment if certain security rights are triggered—does not mean the option is not on an interest in a security.”²³² Each proposed binary KPI option provides a cash payout based on the disclosed KPI, and because the KPI is tied to a pecuniary interest in the issuer’s stock, the binary KPI option is an option on an interest in, or based on the value of an interest in, that stock. For example, stockholders have a pro rata claim to a residual interest in the net assets of the issuer, which is an interest in the security.²³³ The value of that interest is tied to measures such as earnings per share, which is a profitability measure²³⁴ and may be considered by investors, together with other financial and operating information.²³⁵

The Commission is cognizant that similar products with the same underlying KPIs as the binary options described in this order may be structured in different ways and be subject to CFTC jurisdiction. As emphasized above, the Commission’s findings in this order address solely the listing and trading of Cboe’s specific binary option contracts on a securities exchange that lists and trades standardized options on securities in compliance with the securities laws.

The Commission’s findings in this order are non-exclusive and do not address any context

²³¹ See CD Options Approval Order, 72 FR at 32376.

²³² *Id.* at n. 46.

²³³ See, e.g., William W. Cook, A Treatise on the Law of Corporations Having a Capital Stock (Little, Brown & Co. 1913); William Meade Fletcher, Fletcher Cyclopedia of the Law of Corporations (perm. ed., rev. vol. 2013).

²³⁴ See Financial Accounting Standards Board, Accounting Standards Codification § 260 (Earnings per Share).

²³⁵ See note 223, *supra*.

beyond the proposed rule change pending before the Commission. As noted above, the Commission's order does not foreclose other markets from structuring derivative instruments overlying KPIs as other products.

In that regard, for the reasons discussed above, the Exchange's proposed binary KPI options may be listed as securities options within the meaning of the definition of "security" in Section 3(a)(10) of the Exchange Act. As a result, the Exchange's proposal to list and trade binary KPI options as securities options is consistent with Section 6(b)(5) of the Act in that it is not designed to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the exchange.

V. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CBOE-2026-061 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CBOE-2026-061 on the subject line. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CBOE-2026-061 on the subject line, and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. Amendment No. 1 revises the proposal to: (1) correct errors and add clarifying language to the rule text, including with regard to the Exchange's determination of the at-money-value for new series listing and the availability only to registered market-makers of the position limit exemption set forth in proposed Exchange Rule 8.36(e)(2);²³⁶ (2) correct errors and provide additional representations in the description of the proposal, including with regard to the OLPP and OPRA Plan; (3) provide additional description of alternative settlement procedures; (4) provide additional discussion regarding the trading of binary KPI options when trading in the stock of the underlying issuer has been halted; (5)

²³⁶ See proposed Exchange Rules 4.82(d) through (e) and 8.36(e)(2); see also Section III, *supra*.

provide additional information regarding how investors may obtain information regarding binary KPI options; and (6) provide a 25,000-contract position limit for binary KPI options.²³⁷

Amendment No. 1 raises no novel regulatory issues that have not previously been subject to comment, as it clarifies, further addresses and narrows aspects of the original proposal that were subject to comment without altering the proposal's core purpose of permitting the Exchange to list and trade binary KPI options. Indeed, without altering the purpose of the proposal, Amendment No. 1 strengthens the proposal by providing additional clarity and support and setting forth a revised position limit that is appropriately tailored to binary KPI options. Accordingly, for the reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²³⁸ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Designation of the Proposed Binary KPI Options Pursuant to Rule 9b-1

Rule 9b-1 establishes a disclosure framework for standardized options that are traded on a national securities exchange and cleared through a registered clearing agency. Under this framework, the exchange on which a standardized option is listed and traded must prepare an ODD that, among other things, identifies the issuer and describes the uses, mechanics, and risks of options trading, in language that can be easily understood by the general investing public. The ODD is treated as a substitute for the traditional prospectus. A broker-dealer must provide a copy of the ODD to each customer at the time of, or before, approval of the customer's account for trading any standardized option.²³⁹ Any amendment to the ODD must be distributed to each

²³⁷ See Section III, *supra*; see also Amendment No. 1, *supra* note 7.

²³⁸ 15 U.S.C. 78s(b)(2).

²³⁹ See 17 CFR 240.9b-1(d)(1).

customer whose account is approved for trading the options class for which the ODD relates.²⁴⁰

Under Rule 9b-1, use of the ODD is limited to “standardized options” for which there is an effective registration statement on Form S-20 under the Securities Act or that are exempt from registration.²⁴¹ Rule 9b-1 defines “standardized options” as “options contracts trading on a national securities exchange ... which relate to options classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.” The Commission specifically reserved in Rule 9b-1 the ability to designate as standardized options other securities “that the Commission believes should be included within the options disclosure framework.”²⁴²

The proposed binary KPI options meet the Rule 9b-1 definition of standardized options because they would be traded on a national securities exchange and limited to specific expiration dates and exercise prices.²⁴³ More broadly, the proposed binary KPI options would be listed and traded on the Exchange with key standardized terms that characterize standardized options, including, aside from specific expiration dates and exercise prices, terms relating to the issuance of puts and calls, minimum strike intervals, initial and additional series listings, contract

²⁴⁰ See 17 CFR 240.9b-1(d)(2).

²⁴¹ See 17 CFR 240.9b-1(b)(1) and (c)(8). See also 17 CFR 230.238. Rule 238 under the Securities Act provides an exemption from the Securities Act for any standardized option, as defined by Rule 9b-1(a)(4) under the Act, with limited exceptions. Rule 238 does not exempt standardized options from the antifraud provisions of Section 17 of the Securities Act, 15 U.S.C. 77q. Also, offers and sales of standardized options by or on behalf of the issuer of the underlying security or securities, an affiliate of the issuer, or an underwriter, will constitute an offer or sale of the underlying security or securities as defined in Section 2(a)(3) of the Securities Act, 15 U.S.C. 77b(a)(3). See also Securities Act Release No. 8171 (Dec. 23, 2002), 68 FR 188 (Jan. 2, 2003) (Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From Registration Requirements of the Exchange Act of 1934).

²⁴² See Securities Exchange Act Release No. 19055 and Securities Act Release No. 6426 (Sept. 16, 1982), 47 FR 41950, 41954 (Sept. 23, 1982).

²⁴³ See notes 156-164 and accompanying text, *supra*, for discussion of the specific expiration dates and exercise prices for the proposed binary KPI options.

adjustments, time of issuance, and settlement. Further, the fact that the proposed binary KPI options would be centrally cleared supports their treatment as standardized options.

For the avoidance of doubt, however, the Commission also hereby designates the Exchange's proposed binary KPI options as standardized options for purposes of Rule 9b-1 under the Act.²⁴⁴

VIII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴⁵ that the proposed rule change (SR-CBOE-2026-061), as modified by Amendment No. 1, is approved on an accelerated basis.

It is further ordered, pursuant to Rule 9b-1(a)(4) under the Act, that the binary KPI options, as defined and set forth in the proposed rule change (SR-CBOE-2026-061), as modified by Amendment No. 1, are designated as standardized options.

By the Commission.

Vanessa A. Countryman,

Secretary.

²⁴⁴ 17 CFR 240.9b-1.

²⁴⁵ 15 U.S.C. 78s(b)(2).