SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-106919; File No. SR-MEMX-2026-35]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators

November 17, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 9, 2026, MEMX LLC ("MEMX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b-4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing with the Commission a proposed rule change to adopt new Chapter 30 of the Exchange Rules to permit the listing and trading of binary options overlying key performance indicators ("KPIs") reported by certain issuers of stock ("binary KPI options") on the Exchange's options platform ("MEMX Options"), and to make related changes to

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4.

Exchange Rules 16.1, 16.2, 20.6, and 21.17. The text of the proposed rule change is provided in Exhibit 5 and is available on the Exchange's website at https://info.memxtrading.com/regulation/rules-and-filings/.

II. 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 adopt rules to permit the listing of binary options overlying key performance indicators ("KPIs") reported by certain issuers of stock ("binary KPI options") on MEMX Options. The proposed rules are substantially similar to rules of Cboe Exchange, Inc. ("Cboe") that the Commission recently approved.[5]

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

[5] See Securities Exchange Act Release No. 106659 (October 13, 2026), 91 FR 65854 (October 16, 2026) (SR-CBOE-2026-061) (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) ("Cboe Approval Order"). Amendment No. 1 to SR-CBOE-2026-061 replaced and superseded the original filing in its entirety and is published in Sections II and III of the Cboe Approval Order (as so amended, the "Cboe Proposal"). Cboe's rules governing binary KPI options are set forth in Cboe Rules 1.1 (definition of "underlying security"), 4.80 through 4.84, 5.1(b)(3)(F), 5.3(c)(3), 5.4(c)(1), 5.31(d)(1)(D), 5.34(d), 6.5, Interpretation and Policy .10, 6.20(g)(2), 8.36, and 8.43(f) (collectively, the "Cboe Rules").

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.

The Exchange does not currently list binary options. The Exchange proposes to adopt 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 specific financial or operating metric that is reported by the issuer in an earnings-related filing submitted to the Commission meets or exceeds a pre-specified strike level.

Summary of Differences from the Cboe Rules

The proposed rules are based on, and are substantially similar to, the Cboe Rules, and the Exchange proposes to list binary KPI options on the same issuers and KPIs, with the same contract terms, as the binary KPI options approved for listing on Cboe. Throughout this filing, the Exchange has generally used the same language as the Cboe Proposal where the Exchange is adopting the same approach as Cboe. In addition to non-substantive differences (such as conforming changes to reflect the Exchange's rule numbering, defined terms, and existing rules) and other minor differences described in this filing, the proposed rules differ from the Cboe Rules in the following material respects, each of which is further described below:

- Rule structure. Cboe adopted its binary KPI option rules in part by amending its existing rules governing binary index options. Because the Exchange does not currently list binary options, the Exchange proposes to adopt the rules applicable to binary KPI options in a single new Chapter 30, to add provisions applicable to binary KPI options to Rules 20.6 (Nullification and Adjustment of Options

Transactions including Obvious Errors) and 21.17 (Additional Price Protection Mechanisms and Risk Controls), and to make conforming changes to Rules 16.1 and 16.2 to reflect that the Rules applicable to options trading on the Exchange will include Chapter 30. The proposed rules also make conforming changes to reflect the Exchange's rule numbering, defined terms, and existing rules.

- Clearing. Cboe intends to clear binary KPI options through Cboe Clear US, LLC ("CCUS"), and the Cboe Proposal describes certain provisions of CCUS's proposed rules. The Exchange proposes to define "Clearing Corporation," for purposes of binary KPI options, as the registered clearing agency designated by the Exchange to clear binary KPI options, and to provide that references in the Rules to The Options Clearing Corporation ("OCC") mean the Clearing Corporation with respect to binary KPI options. The Exchange will submit a separate proposed rule change to the Commission to designate the registered clearing agency that will serve as the Clearing Corporation for binary KPI options. The Exchange represents that it will not list binary KPI options for trading until the Clearing Corporation is registered with the Commission and operationally ready to clear binary KPI options, all applicable filings and documents of the Clearing Corporation related to binary KPI options are approved by the Commission or effective after review by the Commission, as applicable, the applicable disclosure document required by Rule 9b-1 under the Act is in place, and the other conditions described below are satisfied.
- Maximum execution price. Proposed Rule 21.17(h) is substantially similar to Cboe Rule 5.34(d), which permits Cboe to designate a maximum execution price

for a binary option class, except that, pursuant to proposed Rule 21.17(h), the System will prevent executions of binary KPI options at prices above the Exchange-designated maximum execution price, rather than adjusting such execution prices down to the maximum execution price, as provided in Cboe Rule 5.34(d). Consistent with that rule, the Exchange will designate the maximum execution price for each class of binary KPI options and will notify Options Members of the designated maximum execution price.

- Opening. Cboe Rule 5.31(d)(1)(D) provides that the opening rotation for binary KPI options is initiated at 9:30 a.m. Proposed Rule 30.6(f) instead provides that binary KPI options will open for trading in accordance with Rule 21.7 (Market Opening Procedures), with the stock of the issuer treated as the security underlying the option for purposes of that Rule.
- Trading functionality. Binary KPI options will generally be subject to the same trading functionality on MEMX Options as other options listed on the Exchange. The Exchange does not currently offer complex order functionality, auction mechanisms, floor trading, or flexible exchange options ("FLEX") on MEMX Options, and, accordingly, the discussion in the Cboe Proposal of the application of such functionality to binary KPI options does not apply to the Exchange's proposal.

Proposed Chapter 30 and Conforming Changes to Chapter 16

First, the Exchange proposes to adopt Chapter 30 (Binary KPI Options) to describe binary KPI options. The Rules in proposed Chapter 30 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.[6]

The Exchange also proposes to make conforming changes to Rules 16.1 and 16.2 to reflect the addition of Chapter 30 to the Rules applicable to options trading on the Exchange. Currently, the introductory paragraph to Rule 16.1 provides that the definitions in Rule 16.1 apply with respect to the Rules contained in Chapters 16 to 29, the definition of "Rules of MEMX Options" in Rule 16.1 refers to the rules contained in Chapters 16 to 29, Rule 16.2(a) provides that the Rules contained in Chapters 16 to 29 are the Exchange Rules applicable to the trading of options contracts on MEMX Options, and Rule 16.2(b) provides that, to the extent the Rules relating to options trading contained in Chapters 16 to 29 are inconsistent with any other provisions of the Exchange Rules, the Rules relating to options trading control. The Exchange proposes to amend each of these provisions to refer to Chapters 16 to 30. These proposed changes will ensure that the definitions in Rule 16.1 apply to terms used in proposed Chapter 30 (unless otherwise defined in Chapter 30), and that the Rules in proposed Chapter 30 are treated in the same manner as the Exchange's other options Rules.

Additionally, proposed Chapter 30 provides that, with respect to binary KPI options, unless the context otherwise requires, references in the Rules to The Options Clearing Corporation, OCC, or the Clearing Corporation mean the Clearing Corporation (as defined in proposed Rule 30.1), and references to the rules or by-laws of The Options Clearing Corporation mean the Rules of the Clearing Corporation. As discussed below, proposed Rule 30.1 defines the

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6 The first two sentences of the introductory paragraph to proposed Chapter 30 are the same as the introductory paragraph of Cboe Chapter 4, Section I, other than a conforming reference to Chapter 30. See Cboe Approval Order, supra note 5, 91 FR at 65854. The final sentence of the introductory paragraph to proposed Chapter 30, which relates to references in the Rules to OCC and has no counterpart in the Cboe Rules, is discussed below.

term "Clearing Corporation" as the registered clearing agency designated by the Exchange to clear binary KPI options. Pursuant to the introductory paragraph to proposed Chapter 30, all Rules (including Rules outside of Chapter 30) apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires. A number of those Rules outside of Chapter 30 refer to OCC, either expressly (for example, references to The Options Clearing Corporation or to the rules or by-laws of OCC) or through the terms "Clearing Corporation" and "OCC," which Rule 16.1 currently defines to mean OCC (for example, the definitions of "options contract" and "put" in Rule 16.1 and the applicability provision in Rule 16.2(a)).[7] The purpose of the proposed provision is to ensure that, when these Rules outside of Chapter 30 are applied to binary KPI options, their references to OCC (and to the rules or by-laws of OCC) will be read to refer to the registered clearing agency designated by the Exchange to clear binary KPI options (and to its rules), rather than to OCC specifically, without the need to amend each such Rule. The "unless the context otherwise requires" qualifier ensures that the provision will not apply to references in the Rules that relate to OCC in a context other than the clearing of binary KPI options (for example, references to OCC's calculation of national cleared volume in Rule 21.5).

Proposed Rule 30.1 (Definitions)

The Exchange proposes to adopt Rule 30.1 (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

[7] See Rules 16.1 (definitions of "Clearing Corporation and OCC," "Options Contracts," "Put," and "Rules of the Clearing Corporation and Rules of the OCC") and 16.2(a).

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"[8]). The Exchange proposes to establish these terms in proposed Rule 30.1 and additional provisions related to binary KPI options in proposed Chapter 30, as described below.

The Exchange proposes to define a "binary KPI option" in proposed Rule 30.1 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 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.[9] 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 KPI for purposes of binary KPI options.[10]

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).[11]

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8 This is the term used in the options disclosure document describing the characteristics and risks of binary KPI options that was submitted to the Commission in accordance with Rule 9b-1 under the Act in connection with the listing of binary KPI options on Cboe. See Cboe Approval Order, supra note 5, 91 FR at 65854-55.

9 This is the same as the definition of binary KPI option in Cboe Rule 4.80.

10 Similarly, proposed Rule 30.1 defines the term "underlying security" (or "underlying") to mean "with respect to binary KPI options, the applicable KPI that is the subject of the settlement," which is the same as the definition of underlying security with respect to binary KPI options in Cboe Rule 1.1.

11 This is the same as the definition of call binary KPI option in Cboe Rule 4.80.

The Exchange proposes to define "Clearing Corporation" as the registered clearing agency designated by the Exchange to clear binary KPI options.[12]

The Exchange proposes to define "exercise price" (also referred to as "strike price") as the value[13] 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.[14] 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 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.

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12 The definition of Clearing Corporation reflects that the Exchange may designate OCC or another registered clearing agency to clear binary KPI options. References in proposed Chapter 30 and in this filing to the Clearing Corporation therefore are intended to be clearing agency-neutral. Upon designation of a registered clearing agency to clear binary KPI options, the Exchange will submit a separate proposed rule change to the Commission to reflect such designation. The proposed definition does not alter the requirement that clearing and settlement occur through a registered clearing agency subject to the applicable provisions of the Act and the rules and oversight applicable to that clearing agency. As discussed below, the Exchange will not list binary KPI options for trading until, among other things, the Clearing Corporation is registered with the Commission and operationally ready to clear binary KPI options and all applicable filings and documents of the Clearing Corporation related to binary KPI options are approved by the Commission or effective after review by the Commission, as applicable.

13 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.

14 This is the same as the definition of exercise price in Cboe Rule 4.80. The Exchange proposes to define "exercise settlement amount" for binary KPI options as $1 (unless otherwise adjusted pursuant to Rules 19.6 or 30.5 or modified pursuant to the Rules of the Clearing Corporation), which is the same as the definition of exercise settlement amount in Cboe Rule 4.80 (other than conforming references to the Exchange's Rules regarding adjustments).

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).[15]

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.

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

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15 This is the same as the definition of KPI in Cboe Rule 4.80.

16 This is the same as the definition of put binary KPI option in Cboe Rule 4.80.

17 This is the same as the definition of settlement value in Cboe Rule 4.80, except as described below with respect to paragraph (c) of that definition.

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 believes, however, these values are generally the same.

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

Clearing Corporation.[20] The Exchange will not list binary KPI options for trading unless procedures are established that will apply if the KPI value needed to determine whether a binary KPI option is at- or in-the-money is not available ("alternative settlement procedures"), which procedures will be subject to the applicable regulatory process, including review and approval by the Commission, as applicable.[21] By way of example, the alternative settlement procedures applicable to binary KPI options listed on Cboe (as described in the Cboe Proposal) 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. If an option closing price is not available or is deemed by the clearing agency 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 settlement value (and the exercise settlement amount) of the binary KPI option does not change.[22] In other words, the value of the applicable KPI as reported by the issuer on the

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20 This is the same as paragraph (b) of the definition of settlement value in Cboe Rule 4.80. As discussed above, references in the proposed Rules and this rule filing to the Clearing Corporation mean the registered clearing agency designated by the Exchange to clear binary KPI options.

21 See Cboe Approval Order, supra note 5, 91 FR at 65855 (describing the alternative settlement procedures applicable to binary KPI options listed on Cboe).

22 This is substantially the same as paragraph (c) of the definition of settlement value in Cboe Rule 4.80, except that Cboe Rule 4.80 includes the parenthetical "(as set forth in the Rules of the Clearing Corporation)," which refers to the rules of CCUS.

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.

Proposed Rule 30.2 (Designation of Binary KPI Option Contracts)

The Exchange proposes to add Rule 30.2 (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 30.2(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:[23]

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

[23] The issuers and KPIs set forth in proposed Rule 30.2(a) are the same as the issuers and KPIs set forth in Cboe Rule 4.81(a).

Company	KPI (each financial metric is measured in $ unless otherwise specified)
	AWS: Net Sales North America: Net Sales International: Net Sales Net Sales: Advertising Services
Bank of America Corporation	Diluted Earnings per Share Total Revenue, Net of Interest Expense Net Interest Income Provision for Credit Losses Net Income
Citigroup Inc.	Diluted Earnings per Share Total Revenue, Net of Interest Expense Net Interest Income Total Provision for Credit Losses Net Income
Coinbase Global, Inc.	Net Income per Share – Diluted Total Revenue Transaction Revenue Total Trading Volume Subscription and Services Revenue
Ford Motor Company	GAAP Earnings per Share – Diluted Total Revenues Ford Pro Segment: Revenue Ford Model e Segment: Revenue Ford Blue Segment: Revenue
Intel Corporation	GAAP Earnings per Share Attributable to Intel – Diluted Net Revenue Revenue: Client Computing Group (CCG) Revenue: Data Center and AI (DCAI)

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

Company	**KPI (each financial metric is measured in $ unless otherwise specified)**
	Operating Margin (%)
NVIDIA Corporation	GAAP Diluted Earnings per Share Revenue Data Center Revenue Edge Computing Revenue Automotive Revenue
Palantir Technologies Inc.	Earnings per Share Attributable to Common Stockholders, Diluted Revenue Net Income Closed Deals of at Least $1 Million (#)
Robinhood Markets, Inc.	Net Income Attributable to Robinhood Common Stockholders: Diluted Total Net Revenues Funded Customers (#) Average Revenue per User (“ARPU”) Robinhood Gold Subscribers (#)
SoFi Technologies, Inc.	Earnings per Share Attributable to Common Stockholders – Diluted Total Net Revenue Total Net Revenue – Technology Platform Total Net Revenue – Financial Services Total Net Revenue – Lending
Space Exploration Technologies Corp	Earnings per Share: Diluted Total Revenues
Super Micro Computer, Inc.	Net Income per Common Share: Diluted Net Sales Gross Margin (%) Cash Flow Used in Operations

Company	KPI (each financial metric is measured in $ unless otherwise specified)
	Net Income
Target Corporation	Diluted Earnings per Share Net Sales Food & Beverage Net Sales Apparel & Accessories Net Sales Operating Income: Rate (%)
Tesla, Inc.	Net Income per Share of Common Stocks Attributable to Common Stockholders: Diluted Total Revenues Total Automotive Revenue Model 3/Y Production (#) Supercharger Connectors (#) Free Cash Flow
The Walt Disney Company	Diluted Earnings per Share Revenues Entertainment Subscription Video On Demand (SVOD) Operating Income Revenues: Experiences Segment Operating Income: Sports

The Exchange proposes to add Rule 30.2(b) to clarify that 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.[24] 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.

[24] This is the same as Cboe Rule 4.81(b).

Proposed Rule 30.3 (Terms of Binary KPI Option Contracts)

Next, the Exchange proposes to adopt Rule 30.3 (Terms of Binary KPI Option Contracts) to describe the permissible terms the Exchange may establish for binary KPI option series. Proposed Rule 30.3 provides that binary KPI options listed and traded on the Exchange are designated as to expiration date, exercise price, settlement type, exercise style, exercise settlement amount, contract multiplier, and underlying KPI.[25] 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 30.3(a) states the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled.[26] Binary KPI options for issuers[27] that disclose their earnings results before the open of Regular Trading Hours[28] 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 Regular Trading Hours 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, 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

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25 This is the same as the introductory paragraph of Cboe Rule 4.82.

26 This is substantially the same as Cboe Rule 4.82(a), other than the use of the defined term "Regular Trading Hours" and a conforming change to provide that the Exchange determines whether an issuer discloses its earnings results "before the open or after the close" of Regular Trading Hours, consistent with the preceding sentences of that paragraph.

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

28 Rule 1.5(bb) defines the term "Regular Trading Hours" to mean the time between 9:30 a.m. and 4:00 p.m. Eastern Time, and such definition applies to the Rules applicable to options trading pursuant to Rule 16.1.

option so designated will settle to the opening price of the underlying. While different than how these terms apply to standard 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, the trading hours on expiration dates for each of A.M.-settled and P.M.-settled binary KPI options are consistent with those of A.M.-settled and P.M.-settled index options today.

Proposed Rule 30.3(a) further states that the exercise style of binary KPI options is European-style, which is the same as Cboe Rule 4.82(a).[29] A European-style option may only be exercised on its expiration date.[30]

Proposed Rule 30.3(b) describes permissible expirations for binary KPI options.[31] 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.[32] If that date is a

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29 See Cboe Rule 4.82(a).

30 See Rule 16.1 (definition of European-Style Option).

31 This is the same as Cboe Rule 4.82(b).

32 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

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 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.[33]

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional 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

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establishes as the date it will disclose earnings results for that quarter. The Exchange will notify Options Members regarding finalized expiration dates for binary KPI options once known.

33 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.

expiration date of the option contract.[34] 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 week prior to the expiration date of a binary KPI option. The proposed permissible expirations for binary KPI options are the same as those permitted for binary KPI options under the Cboe Rules.[35] 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. The proposed rule change also limits the Exchange to list up to two expirations at one time for binary KPI options. As noted in the Cboe Proposal, the proposed scope of permissible expirations for binary KPI options is narrower than that permitted for binary index options under Cboe's rules (as previously approved by the Commission), which permit expirations out more than 12 months up to 36 months from the time they are listed.[36]

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 the same as Cboe Rule 4.82(b)(1) and (3) and is substantially similar to current Exchange Rules applicable to Short Term Option Series,[37] as well as the rules of another

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34 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.

35 See Cboe Rule 4.82(b).

36 See Cboe Rule 4.72; Cboe Approval Order, supra note 5, 91 FR at 65857.

37 See Rule 16.1 (definition of Short Term Option Series) and Rule 19.5, Interpretation and Policy .05.

options exchange applicable to binary equity options.[38] 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.

Proposed Rule 30.3(c) describes the automatic exercise feature of binary KPI options. Specifically, proposed Rule 30.3(c) provides 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.[39]

Proposed Rule 30.3(d) describes the permissible exercise prices (or strike prices) the Exchange may designate for binary KPI option series. Proposed Rule 30.3(d)(1) describes how the value of exercise prices of binary KPI option series are measured.[40] 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

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

39 This is the same as Cboe Rule 6.20(g)(2).

40 This is substantially the same as Cboe Rule 4.82(c)(1), other than the correction of a typographical error in proposed Rule 30.3(d)(1)(A).

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).[41]

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 filings 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

41 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.

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.

The Exchange will announce in a notice to Options Members if the scaling factor applied to a binary KPI option class changes (for example, the KPIs will be scaled in billions rather than in millions).

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 30.3(d)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values.[42] 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

42 This is the same as Cboe Rule 4.82(c)(1)(B).

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. Whether a symbol reflects a positive or negative value will be available in contract specifications.

Proposed Rule 30.3(d)(2) provides the minimum interval between strike prices for binary KPI options series is:[43]

- 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,

43 This is the same as Cboe Rule 4.82(c)(2).

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 30.3(e) provides that, notwithstanding Rule 21.4(a) (which provides that orders are expressed in terms of dollars per unit of the underlying security), bids and offers for a binary KPI option with a multiplier other than 100 must be expressed in terms of dollars per 1/multiplier of the total value of the contract.[44] For example, if a binary KPI option has a multiplier of 1, an offer of "0.50" represents an offer of $0.50.

Proposed Rule 30.3(f) describes the initial series of a binary KPI option the Exchange may open for trading.[45] 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'

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44 This is substantially the same as Cboe Rule 5.3(c)(3), which applies to all binary options listed on Cboe.

45 This is the same as Cboe Rule 4.82(d), other than a conforming cross-reference.

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.[46] 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 2;[47] (2) for KPIs

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46 See, e.g., Rule 19.5, Interpretation and Policy .05(d).

47 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

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.[48]

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.[49] 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 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

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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.

48 See, e.g., Rule 19.5, Interpretation and Policy .05(c) and (d) (permissible series for Short Term Option Series).

49 This is substantially the same as Cboe Rule 4.82(e).

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 in proposed Rule 30.3(f)) 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.[50] 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

50 See, e.g., Rule 19.5, Interpretation and Policy .05(c) and (d).

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 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 19.5, Interpretation and Policy .05(d) 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 substantially 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 19.5, Interpretation and Policy .05(d), 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 30.3(h) provides that the contract multiplier for each class of binary KPI options is one.[51]

Proposed Rule 30.4 (Determination of Settlement Value)

The Exchange proposes to add new Rule 30.4 (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 KPI in relation to the type of binary KPI option (i.e., put or call) and the exercise price.[52] 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

51 This is the same as Cboe Rule 4.82(f).

52 This is the same as Cboe Rule 4.83.

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 30.5 (Adjustment)

Proposed Rule 30.5 (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 such adjustment has been determined, the Exchange will announce this adjustment, which will become effective as of the time specified in that announcement.[53]

Proposed Rule 30.6 (Binary KPI Options Trading Hours)

Next, the Exchange proposes to adopt Rule 30.6(a), which provides that Regular Trading Hours for binary KPI options are from 9:30 a.m. to 4:00 p.m.[54] Further, proposed Rules 30.6(b) and (c) provide that 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.[55]

The Exchange recognizes it is possible, although unusual and unlikely, that an issuer's KPI information may become available at unexpected times. Proposed Rules 30.6(d) and (e) address the impact on trading and expiration that such disclosure may have.[56] 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

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53 This is the same as Cboe Rule 4.84. This is also consistent with how adjustments are handled for other options listed on the Exchange. See Rule 19.6.

54 This is the same as Cboe Rule 5.1(b)(3)(F) and is consistent with the hours during which other options listed on the Exchange may be traded. See Rule 21.2(a). As set forth in Rule 1.5(bb), Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern Time, and all times referenced in proposed Rule 30.6 are Eastern Time.

55 This is the same as Cboe Rule 5.1(b)(3)(F)(i) and (ii).

56 Proposed Rules 30.6(d) and (e) are the same as Cboe Rules 5.1(b)(3)(F)(iii) and (iv) (other than the conforming reference to Rule 20.3 and the correction of a typographical error in proposed Rule 30.6(e)).

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.[57] 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 disclosure[58] 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 20.3. 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 option series will cease.[59] This proposed provision addresses the unlikely event that KPI 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.

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57 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.

58 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.

59 Rule 20.3(a) provides that the Exchange may halt trading in any option contract in the interests of a fair and orderly market, and sets forth factors the Exchange will consider in determining whether trading in an option contract should be halted.

The Exchange proposes to adopt Rule 30.6(f), which provides that, for binary KPI options, the System shall open for trading in accordance with Rule 21.7 (Market Opening Procedures), with the stock of the issuer treated as the security underlying the option for purposes of that Rule. Rule 21.7(a) provides that the System opens options (other than index options) for trading after the System's observation after 9:30 a.m. of both (i) the first transaction on the primary listing market in the security underlying the option and (ii) the Limit Up-Limit Down price bands applicable to the security underlying the option as disseminated by the applicable securities information processor. Rule 21.7(b) provides that, in the event the underlying security has not opened within a reasonable time after 9:30 a.m., the Exchange will determine the cause of the delay, and the beginning of trading in the options class will be delayed until the market for the underlying security has opened unless the Exchange determines that the interests of a fair and orderly market are best served by opening trading in the options contracts. Rule 21.7(c) provides that the Exchange may delay the commencement of trading in any class of options in the interests of a fair and orderly market.

Rather than adopt a fixed-time opening trigger,[60] the Exchange proposes to apply its existing opening procedures for equity options to binary KPI options, using the issuer's stock as the reference security for purposes of those procedures. The issuers of the KPIs that may underlie binary KPI options are large, actively traded issuers whose stocks generally open for trading on their primary listing markets promptly after 9:30 a.m. Therefore, under normal market conditions, the Exchange expects binary KPI options to open for trading at or shortly after 9:30 a.m., consistent with the opening of binary KPI options on Cboe. The Exchange believes the

60 See Cboe Rule 5.31(d)(1)(D). Cboe noted that its fixed-time trigger is analogous to the opening process for its VIX options. See Cboe Approval Order, supra note 5, 91 FR at 65861.

proposed approach is appropriate and conservative, as it will use the opening of trading in the issuer's stock as an objective and readily observable reference point for the commencement of trading in binary KPI options, and will permit the Exchange to delay the opening of binary KPI options pursuant to Rule 21.7(b) if the opening of the issuer's stock is delayed (for example, because of unusual circumstances relating to the issuer). The proposed approach will also allow the Exchange to use its existing, well-established opening process for binary KPI options without requiring development of a separate opening process for a single product.

Proposed Rule 30.8 (Minimum Increments for Bids and Offers)

The Exchange proposes to adopt Rule 30.8, which provides that, notwithstanding Rule 21.5, the Exchange shall establish the minimum increment for bids and offers on orders for binary KPI options on a class-by-class basis, which may not be less than $0.01.[61] Because binary KPI options have a maximum exercise settlement amount of $1, the Exchange believes it is necessary to permit the Exchange to establish minimum increments as small as $0.01 to permit binary KPI options to be quoted and traded at prices that meaningfully reflect the market's valuation of the applicable KPI outcome.

Proposed Rule 21.17(h) (Maximum Execution Price Protection)

The Exchange proposes to adopt a maximum execution price protection mechanism for binary KPI options. Specifically, proposed Rule 21.17(h) permits the Exchange to apply a maximum execution price protection for binary KPI options on a class basis, pursuant to which the System prevents an execution of a binary KPI option at a price above the Exchange-

61 This is substantially the same as Cboe Rule 5.4(c)(1), which provides that Cboe establishes the minimum increment for bids and offers on orders for binary options (including binary index options and binary KPI options) on a class-by-class basis, which may not be less than $0.01.

designated maximum execution price for that class.[62] 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 above that maximum value, as it protects investors from execution prices that are potentially erroneous.

The Exchange will notify Options Members of the maximum execution price it designates for each binary KPI option class, and, pursuant to Rule 21.17, the Exchange will maintain the maximum execution price for each binary KPI option class in publicly available specifications and/or publish it in a Regulatory Circular.[63]

Proposed Rule 20.6(m) (Obvious Errors)

The Exchange proposes to add Rule 20.6(m), which provides that Rule 20.6 does not apply to binary KPI options.[64] While the obvious error provisions set forth in Rule 20.6 will not be applicable to binary KPI options, the Exchange believes the proposed maximum execution price protection in proposed Rule 21.17(h) may prevent executions at potentially erroneous prices, obviating the need for an obvious error process for binary KPI options.

Proposed Rule 30.7 (Position Limits for Binary KPI Options)

The Exchange proposes to adopt Rule 30.7 to set forth position limit requirements for binary KPI options. Proposed Rule 30.7(a) provides that, in determining compliance with Rule

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62 This is substantially similar to Cboe Rule 5.34(d), which applies to all binary options listed on Cboe, except that Cboe Rule 5.34(d) provides that 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, whereas proposed Rule 21.17(h) provides that the System prevents an execution of a binary KPI option at a price above the Exchange-designated maximum execution price for that class. Under either approach, binary KPI options will not execute at prices above the designated maximum execution price.

63 See Rule 21.17 (providing that all numeric values established by the Exchange pursuant to Rule 21.17 will be maintained by the Exchange in publicly available specifications and/or published in a Regulatory Circular).

64 This is the same as Cboe Rule 6.5, Interpretation and Policy .10, other than a conforming reference to Rule 20.6.

18.7 (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.[65]

Proposed Rule 30.7(b) provides 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).[66] Proposed Rule 30.7(c) provides that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer.[67]

Proposed Rule 30.7(d) provides that, for purposes of the position limits established under proposed Rule 30.7, long positions in put binary KPI options and short positions in call binary KPI options are considered to be on the same side of the market, and short positions in put binary KPI options and long positions in call binary KPI options are considered to be on the same side of the market.[68]

Proposed Rule 30.7(e) provides that binary KPI options are not subject to any hedge exemptions from standard position limits, including any such exemption granted by another options exchange upon which an Options Member may rely pursuant to Rule 18.8.[69] Proposed

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65 This is the same as Cboe Rule 8.36(a)(3), other than a conforming reference to Rule 18.7.

66 This is the same as Cboe Rule 8.36(b)(2).

67 This is the same as Cboe Rule 8.36(c)(2).

68 This is substantially the same as Cboe Rule 8.36(d), which applies to all binary options listed on Cboe. This is also consistent with how positions are combined for purposes of determining compliance with position limits for other options listed on the Exchange. See Rule 18.7(a)(1).

69 Cboe Rule 8.36(e) provides that binary options are not subject to the hedge exemption to the standard position limits found in Cboe Rule 8.30. The Exchange's Rules do not include equity hedge exemptions.

Rule 30.7(e) further provides that, notwithstanding paragraph (a), 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 price, shall be exempt from the established position limits prescribed in Rule 30.7.[70] 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 equity hedge exemptions, such as those set forth in Cboe Rule 8.30, Interpretation and Policy .04 (Equity Hedge Exemptions), upon which Options Members may rely for equity options listed on the Exchange pursuant to Rule 18.8, are inapplicable to the proposed binary KPI options. For example, under Cboe 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.

Rather, Rule 18.8 provides that an Options Member may rely upon any available exemptions from applicable position limits granted from time to time by another options exchange for any options contract traded on the Exchange, subject to certain conditions. Proposed Rule 30.7(e) makes clear that an Options Member may not rely on Rule 18.8 to apply a hedge exemption granted by another options exchange to binary KPI options, which achieves the same result as Cboe Rule 8.36(e).

70 This is substantially the same as Cboe Rule 8.36(e)(2). Rule 16.1 defines "Market Maker" as an Options Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter 22 of the Rules.

Proposed Rule 30.7(f) addresses reports related to position limits for binary KPI options. Rule 18.10(a) provides that, in a manner and form prescribed by the Exchange, each Options Member 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. Proposed Rule 30.7(f) provides that, in computing reportable positions in binary KPI options under Rule 18.10, (1) positions in binary KPI options are not aggregated with non-binary option contracts overlying the stock of the issuer and (2) for purposes of the report required by Rule 18.10(a), 100 binary KPI option contracts equal one standard option contract.[71] The Exchange believes this is reasonable given that binary KPI options have a multiplier of 1 while standard equity option contracts have a multiplier of 100.[72]

Proposed Rule 30.9 (Margin)

Pursuant to current margin rules, binary KPI options listed on Cboe will be fully funded.[73] Specifically, Cboe Rule 10.3(m) provides that no binary option carried for a customer is considered of any value for purposes of computing the margin required in the customer's account; that the initial and maintenance margin required on a binary option carried long is 100% of the purchase price of the binary option; and that the initial and maintenance margin required on a binary option carried short is the exercise settlement amount (subject to specified spread and

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71 This is substantially the same as Cboe Rule 8.43(f), which provides that, in computing reportable binary options, positions in binary options are not aggregated with non-binary option contracts on the same or similar underlying security or index, and that, for purposes of the report required by Cboe Rule 8.43(a), 100 binary KPI option contracts equal one standard option contract.

72 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 18.7.

73 See Cboe Approval Order, supra note 5, 91 FR at 65877 (citing Cboe Rule 10.3(m)); Cboe Rule 10.3(m).

straddle/combination provisions). Cboe Rule 10.3(m) also sets forth the circumstances in which a short binary option is deemed a covered position eligible for the cash account (including if cash or cash equivalents equal to 100% of the exercise settlement amount are held in the account). Rule 28.3 requires each Options Member or associated person to be bound by the initial and maintenance margin requirements of either Cboe or the New York Stock Exchange ("NYSE"), as elected in writing by the Options Member or associated person, and provides that, upon such election, the Options Member or associated person shall be bound to comply with the margin rules of Cboe or the NYSE, as applicable, as though such rules were part of the Rules. To ensure that the same margin requirements apply to all binary KPI options listed on the Exchange (and that such requirements are the same as those that apply to binary KPI options listed on Cboe), the Exchange proposes to adopt Rule 30.9, which provides that, notwithstanding Rule 28.3, an Options Member or associated person must comply with the margin requirements applicable to binary options set forth in Cboe Rule 10.3(m), as the same may be in effect from time to time, with respect to binary KPI options, regardless of whether it has elected to be bound by the margin rules of Cboe or the NYSE. Proposed Rule 30.9 further provides that such requirements shall apply as though they were part of the Rules, consistent with the existing framework in Rule 28.3. As a result, binary KPI options listed on the Exchange will be fully funded in the same manner as binary KPI options listed on Cboe.

Trading of Binary KPI Options on the Exchange

Except as otherwise described herein, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner to standard equity and index options 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

proposed Rule 30.9, binary KPI options will be fully funded), and trading halt procedures,[74] 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 systems capacity and represents that it believes the Exchange has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

Binary KPI options will be traded electronically on MEMX Options in generally the same manner as other options listed on the Exchange, and orders in binary KPI options will be executed in accordance with the Exchange's existing order display and book processing rules.[75] The Exchange expects that the order types, order instructions, and times-in-force available for other options listed on the Exchange will generally be available for binary KPI options; however, pursuant to Rule 21.1, the Exchange may determine which order types, order instructions, and times-in-force are available for binary KPI options on a class or system basis.[76] Consistent with current practice, the Exchange will notify Options Members if it chooses to restrict order types, order instructions, or times-in-force available for binary KPI options. Market Makers appointed in a binary KPI options class will be subject to the obligations set forth in Chapter 22 of the Rules, including the continuous quoting obligations in Rule 22.6(d). The Exchange does not currently offer complex order functionality, auction mechanisms, floor trading, or FLEX options

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74 Binary KPI options will not be automatically tied to the trading state of the issuer's stock (other than with respect to the opening of trading in binary KPI options pursuant to proposed Rule 30.6(f), as discussed above), and, thus, trading in binary KPI options may not be affected by halts in the issuer's stock. The binary KPI options will halt in accordance with current Rules, including Rules 20.3 and 20.4.

75 See Rule 21.8.

76 See Rule 21.1(d), (e), and (g) (defining the order types, order instructions, and times-in-force available on MEMX Options and providing that the Exchange determines which are available on a class or system basis).

on MEMX Options, and, accordingly, such functionality will not be available for binary KPI options.

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 information to OPRA for all other options the Exchange lists. Additionally, the Exchange believes that OPRA 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 does not believe that 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).[77] The Exchange does not believe Options Members 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 KPI options on market fragmentation and the capacity of the Exchange's automated system.

[77] OPRA may need to update how it disseminates open interest information for binary KPI options to the extent the Clearing Corporation is a registered clearing agency other than OCC, as OPRA's current process incorporates information from OCC. In that case, the Exchange will work with OPRA and the Clearing Corporation to implement a process to provide OPRA with binary KPI option open interest so OPRA may incorporate it into its dissemination process.

Surveillance

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.[78] 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 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

78 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.

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.[79] The Exchange does not believe that 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, the administrator of the CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options).

Linkage Plan

Pursuant to the Options Order Protection and Locked/Crossed Market Plan ("Linkage Plan"),[80] participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and Exchange Rules 27.1 through 27.3 regarding intermarket linkage) applies to the trading of multiply listed options. Rule 21.9 (Order Routing) addresses order routing away 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

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79 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 believes that there will be no changes to the reporting specifications for broker-dealers to accommodate the reporting of information regarding binary KPI options to CAT.

80 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.

avoid displaying locked/crossed markets in accordance with the Linkage Plan for all multiply listed options (and Exchange Rules 27.1 through 27.3 regarding intermarket linkage).

Clearing, Options Disclosure Document, and OLPP

Upon launch, binary KPI options will clear through the Clearing Corporation (i.e., the registered clearing agency designated by the Exchange to clear binary KPI options), which will serve as the central counterparty to each transaction and facilitate risk mitigation through established clearing, settlement, contract adjustment, and other standardized operational processes. The Exchange will submit a separate proposed rule change to the Commission to designate the registered clearing agency that will serve as the Clearing Corporation. As discussed above, the proposed rule change provides that, with respect to binary KPI options, references in the Rules to OCC mean the Clearing Corporation. Accordingly, once the Clearing Corporation is designated, the existing references to OCC in the Rules will apply to the Clearing Corporation with respect to binary KPI options, without the need to amend each such reference. The Exchange represents it will not list for trading binary KPI options until the registered clearing agency designated as the Clearing Corporation is registered with the Commission and authorized and operationally ready to clear binary KPI options and until all applicable filings and documents of the Clearing Corporation related to binary KPI options being cleared through the Clearing Corporation are approved by the Commission or effective after review by the Commission, as applicable.

The Exchange intends for binary KPI options to be treated as listed standardized options. Rule 9b-1 under the Act[81] establishes a disclosure framework for standardized options pursuant to which investors receive a disclosure document describing the terms, characteristics, and risks

81 17 CFR 240.9b-1.

of the product before trading. Depending on which registered clearing agency is designated as the Clearing Corporation, the applicable Rule 9b-1 disclosure document may be based on an existing options disclosure document utilized by that clearing agency, as modified or supplemented, as appropriate, or another comparable disclosure document prepared in connection with the clearance of binary KPI options. In either case, the disclosure document would contain substantially similar information regarding the terms, characteristics, risks, settlement mechanics, and other material features of binary KPI options and would be tailored, as necessary, to address the product's unique features and distinctions from traditional listed options. The Exchange will not list binary KPI options for trading until the applicable Rule 9b-1 disclosure document is in place.[82]

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. If the Clearing Corporation designated by the Exchange is a registered clearing agency other than OCC, the Exchange will work with the other participants in the OLPP, in accordance with the procedures set forth in the OLPP, to propose amendments to the OLPP to reflect listing procedures applicable to options that will be cleared by the Clearing Corporation, including binary KPI options. If an amendment to the OLPP to apply those procedures to the Clearing Corporation is not effective before the Exchange begins listing binary KPI options, that will have no impact on the listing or trading of binary KPI

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82 Cboe 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. See Cboe Approval Order, supra note 5, 91 FR at 65864. In the Cboe Approval Order, the Commission also designated the binary KPI options described in the Cboe Proposal as standardized options for purposes of Rule 9b-1. See id. at 65886. The binary KPI options proposed herein have the same terms as those binary KPI options and will similarly be traded on a national securities exchange with specific expiration dates and exercise prices and cleared through a registered clearing agency.

options, as the Exchange will certify and list binary KPI options following the same procedures at the Clearing Corporation as it does for other options at OCC.

If binary KPI options listed on the Exchange or another options exchange are cleared by more than one registered clearing agency (for example, if the Exchange designates a registered clearing agency other than OCC as the Clearing Corporation and OCC submits a proposal to the Commission to amend its rules to clear binary KPI options, or vice versa), 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 clearing agencies other than OCC as it relates to those options exchanges that clear binary options through such clearing agencies) 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 more than one registered clearing agency could clear binary KPI options. Accordingly, to the extent such an amendment has not already been filed, the Exchange will work with the other participants in the OLPP to file with the Commission a proposed amendment to the OLPP, in accordance with the procedures set forth in the OLPP and Rule 608 of Regulation NMS,[83] as promptly as practicable following Commission publication of a notice of filing of a proposed rule change by a registered clearing agency to amend its rules to clear binary KPI options that results in binary KPI options being cleared by more than one registered clearing agency, and will operate in good faith in cooperating with the Commission and the applicable registered clearing agencies to ensure such proposed amendment reflects the changes referenced above as well as any additional changes the

83 17 CFR 242.608.

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.[84]

Implementation

The Exchange will not commence listing and trading of binary KPI options until (1) the Exchange has designated the Clearing Corporation pursuant to a proposed rule change submitted to the Commission, and the registered clearing agency so designated is registered with the Commission and authorized and operationally ready to clear binary KPI options; (2) all applicable filings and documents of the Clearing Corporation related to binary KPI options are approved by the Commission or effective after review by the Commission, as applicable; (3) the alternative settlement procedures described above have been established; (4) the applicable disclosure document under Rule 9b-1 is in place; and (5) any changes relating to CAT, FINRA, OPRA, the Linkage Plan, and the OLPP that are necessary for the listing and trading of binary KPI options on the Exchange have been completed. The Exchange will announce the implementation date of the proposed rule change by notice to Options Members.

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.[85] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[86] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

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84 Cboe made a similar commitment with respect to the OLPP in the Cboe Proposal. See Cboe Approval Order, supra note 5, 91 FR at 65864.

85 15 U.S.C. 78f(b).

86 15 U.S.C. 78f(b)(5).

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)[87] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[88] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and persons associated with its Members with the Act, the rules and regulations thereunder, and the rules of the Exchange.

As described above, the proposed rule change is based on, and is substantially similar to, the Cboe Rules, which the Commission recently found to be consistent with the Act, including Sections 6(b)(1), 6(b)(5), and 6(b)(8) and Section 11A of the Act.[89] The proposed binary KPI options will overlie the same KPIs of the same issuers, and will have the same standardized terms, as the binary KPI options that the Commission approved for listing and trading on Cboe. As such, the Exchange believes the proposed rule change is consistent with the Act for the same reasons as the Cboe Rules. The limited differences between the proposed rules and the Cboe Rules, which are described above, either reflect the Exchange's rule structure, existing rules, and systems, and the fact that the Exchange has not yet designated the registered clearing agency that

87 Id.

88 15 U.S.C. 78f(b)(1).

89 See Cboe Approval Order, supra note 5, 91 FR at 65876. See also 15 U.S.C. 78f(b)(8) and 78k-1.

will clear binary KPI options, or are designed to achieve the same result as, or provide additional investor protection beyond, the Cboe Rules (including that the System will prevent, rather than adjust the price of, executions of binary KPI options above the maximum execution price, and the use of the opening of trading in the issuer's stock as the reference point for opening binary KPI options), and the Exchange believes these differences are consistent with the Act for the reasons discussed below.

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 option 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. Securities with high market capitalizations and liquid markets are generally less susceptible to manipulation because of the 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 30.2 to list the specific binary KPI option 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 currently listed for trading on the Exchange and binary option contracts listed for trading on other options exchanges, 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 listed on other options exchanges, 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 substantially the same manner as, and have the same contract terms as, the binary KPI options the Commission approved for listing and trading on Cboe. The proposed definitions of binary KPI option, call binary KPI option, exercise price, and put binary KPI option are the same as those terms in the Cboe Rules.[90]

The proposed definition of settlement value for binary KPI options is the same as the definition in the Cboe Rules (other than the clearing agency-neutral change to paragraph (c) described above). The proposed $1 exercise settlement amount for binary KPI options is the same as the exercise settlement amount for binary KPI options under the Cboe Rules. The Exchange believes the proposed $1 exercise settlement amount is reasonable given the retail nature of the proposed 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 alternative settlement procedures of the type described above in the Purpose section (which, as discussed above, must be established before the Exchange lists binary KPI options for trading) 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 such alternative settlement procedures, as described in the Cboe Proposal, the payout

90 See Cboe Rule 4.80.

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 it is determined 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 submitting its earnings-related filing to the Commission for the relevant reporting period), alternative settlement procedures may apply. 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 is no bid/offer or other data for price discovery. The timing of the triggering of alternative settlement procedures depends on when any such determination of the lack of availability of the KPI is made, which will often be the expiration date (but may be at other times as set forth in the applicable alternative settlement procedures and further described in the options disclosure document for binary KPI options). If, when applying the alternative settlement procedures, it is determined 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.[91]

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[91] 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,

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. As is the case for traditional options, the proposed rule change establishes permissible strike intervals, the amounts of which increase as the value of the strike increases. Additionally, the Exchange 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, 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, 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 example[92]) 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.

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

92 The binary KPI option contract specifications available to Options Members will set forth the scaling factor for each binary KPI option.

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.[93]

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 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

93 See proposed Rule 30.3(f) and (g).

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 make available information regarding the terms of binary KPI options and changes to such terms to Options Members. Further, Options Members 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 expects that retail brokerage firms will display binary KPI options on their user interfaces in ways that similarly make the terms of the options clear to their retail customers.[94] Therefore, through information made available by the Exchange and 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, which is the same as the Cboe Rules.[95]

The Exchange believes proposed Rule 30.6, which establishes Regular Trading Hours 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

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94 For example, the Cboe Proposal notes that retail brokerage firms 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?". See Cboe Approval Order, supra note 5, 91 FR at 65871.

95 See Cboe Rule 4.82(f).

distinction between A.M.- and P.M.-settled contracts is the same as the settlement terms applicable to binary KPI options under the Cboe Rules.[96]

The Exchange believes halting trading in binary KPI options in accordance with current Rules (including Rules 20.3 and 20.4) 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, 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 20.3.

The Exchange believes proposed Rule 30.6(f), which provides that the System shall open binary KPI options for trading in accordance with Rule 21.7, with the stock of the issuer treated as the security underlying the option for purposes of that Rule, is consistent with the Act. The proposed rule will allow binary KPI options to open for trading in an orderly and transparent

96 See Cboe Rule 4.82(a).

manner and removes impediments to a free and open market by applying the Exchange's existing, well-established opening process for equity options to binary KPI options. The Exchange believes the proposed rule will protect investors and the public interest because it will use the opening of trading in the issuer's stock on its primary listing market as an objective and readily observable reference point for the commencement of trading in binary KPI options, and will permit the Exchange to delay the opening of binary KPI options if the opening of the issuer's stock is delayed (which may indicate unusual circumstances relating to the issuer) and the Exchange determines that the interests of a fair and orderly market are not best served by opening binary KPI options. Under normal market conditions, the Exchange expects binary KPI options to open for trading at or shortly after 9:30 a.m., consistent with the fixed-time opening of binary KPI options on Cboe that the Commission approved.[97]

The Exchange believes proposed Rule 30.3(e), which addresses bid and offer conventions for binary KPI 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.[98]

The Exchange believes proposed Rule 30.8, which provides that, notwithstanding Rule 21.5, the Exchange shall establish the minimum increment for bids and offers on orders for binary KPI options on a class-by-class basis, which may not be less than $0.01, is consistent with just and equitable principles of trade and will protect investors. Proposed Rule 30.8 is

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97 See Cboe Rule 5.31(d)(1)(D); Cboe Approval Order, supra note 5, 91 FR at 65880.

98 The Exchange notes that this proposal is substantially the same as Cboe Rule 5.3(c)(3), which applies to all binary options listed on Cboe.

substantially the same as Cboe Rule 5.4(c)(1), which the Commission approved with respect to binary KPI options.[99]

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 20.6 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

99 See Cboe Approval Order, supra note 5, 91 FR at 65880.

21.17(h), the Exchange may apply a maximum execution price protection for binary KPI options on a class basis, pursuant to which the System will prevent executions from occurring at prices above the Exchange-designated maximum execution price for that class. 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 20.6 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 proposed Rule 21.17(h) is consistent with the Act and will protect investors and the public interest. Binary KPI options have a maximum value equal to their exercise settlement amount. Preventing executions at prices above the Exchange-designated maximum execution price for a binary KPI option class therefore protects investors from execution prices that are potentially erroneous. While Cboe Rule 5.34(d) provides that the System adjusts execution prices above the maximum execution price down to the maximum execution price, proposed Rule 21.17(h) provides that the System prevents executions at prices above the maximum execution price. The Exchange believes this difference does not raise any novel issues, as both approaches achieve the same purpose of ensuring that binary options do not execute at prices above the designated maximum execution price, and preventing such executions (rather than adjusting their prices) avoids executing an order at a price other than the price at which the parties' orders would otherwise have executed. Proposed Rule 21.17(h) is otherwise substantially the same as Cboe Rule 5.34(d), which the Commission approved, and, consistent with that rule, the Exchange will designate the maximum execution price for each

binary KPI option class and will notify Options Members of the designated maximum execution price.[100] Accordingly, the Exchange believes the proposed maximum execution price protection does not raise any novel issues.

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.[101] The proposed position limit is also the same as the position limit for binary KPI options in the Cboe Rules, which the Commission found reasonably designed to protect investors and the public interest and to prevent fraud and manipulation.[102] Specifically, the proposed position limit of 25,000 standard contracts is equivalent to the position limit in Rule 18.7(d)(1) that applies to an equity option for which the underlying security 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 18.7(d)(5). 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

100 Id.

101 See Rule 18.7(d)(1).

102 See Cboe Approval Order, supra note 5, 91 FR at 65880.

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.[103] 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 listed on Cboe (which also have a contract multiplier of one).[104] 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 option contract) with a multiplier of one would equate to $25,000 notional value. Counting 100 binary KPI option 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

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

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

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, Cboe analyzed the degree to which KPIs of a given issuer are correlated with one another.[105] Specifically, Cboe performed a correlation

105 See Cboe Approval Order, supra note 5, 91 FR at 65873.

analysis for each company set forth in Cboe Rule 4.81(a) (which are the same companies set forth in proposed Rule 30.2(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.[106] As Cboe noted, 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, as did Cboe, that 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,

106 Id.

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, Cboe 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,[107] Cboe 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, Cboe 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.[108]

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 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

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

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

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.[109] 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]."[110]

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 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

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

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

available only to binary KPI positions held by Market Makers. As described above, binary KPI options are not subject to any hedge exemption from standard position limits, including any equity hedge exemption granted by another options exchange upon which an Options Member may otherwise rely pursuant to Rule 18.8, which is consistent with the Cboe Rules.[111] 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 the Rules) 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 proposed Rule 30.7(f) is consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor Options Member 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 18.10(a) is required given the relatively small size of binary KPI option 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

111 See Cboe Rule 8.36(e); Cboe Approval Order, supra note 5, 91 FR at 65881.

maximum value of a binary KPI option contract) with a multiplier of one would equate to $200 notional value. Counting 100 binary KPI option 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. Further, consistent with the Cboe Rules,[112] proposed Rule 30.7(f) provides that positions in binary KPI options are not aggregated with non-binary option contracts overlying the stock of the issuer in computing reportable positions, which is consistent with the non-aggregation of such positions for purposes of position limits discussed above. The Exchange believes this reporting framework, coupled with the proposed position limits amendments, provides a fully adequate regulatory framework for these instruments.

The Exchange believes proposed Rule 30.9 is consistent with the Act and will protect investors and the public interest because it will ensure that the same margin requirements apply to all binary KPI options listed on the Exchange, regardless of whether an Options Member has elected to be bound by the margin rules of Cboe or the NYSE pursuant to Rule 28.3, and that such requirements are the same as those that apply to binary KPI options listed on Cboe. As a result, binary KPI options listed on the Exchange will be fully funded, which the Commission noted is an important safeguard designed to help protect investors and to prevent fraud and

112 See Cboe Rule 8.43(f).

manipulation.[113] The proposed rule is also consistent with the existing framework in Rule 28.3, pursuant to which the margin rules of Cboe or the NYSE apply to Options Members as though such rules were part of the Rules.

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 material non-public information 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.

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113 See Cboe Approval Order, supra note 5, 91 FR at 65881.

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 listed 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 the binary KPI options the Exchange proposes to list. 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."[114] Consistent with this purpose, Congress and the Commission have repeatedly stated their preference for competition, rather than regulatory intervention to determine products and services in the securities markets.[115] 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

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

115 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").

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, 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 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. Rather, the Exchange believes the proposed rule change will promote intermarket competition, as it will permit the Exchange to list and trade binary KPI options with the same terms as the binary KPI options that

the Commission recently approved for listing and trading on Cboe,[116] thereby providing market participants with an additional venue on which to trade these products.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues that offer similar products, including Cboe, which may list binary KPI options with the same terms as those proposed herein. The Exchange believes the proposed rule change will promote competition by providing market participants with an additional venue on which to trade binary KPI options.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[117] and Rule 19b-4(f)(6) thereunder.[118] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.[119]

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116 See Cboe Approval Order, supra note 5, 91 FR at 65876.

117 15 U.S.C. 78s(b)(3)(A)(iii).

118 17 CFR 240.19b-4(f)(6).

119 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[120] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MEMX-2026-35 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-MEMX-2026-35. This file number should be included on the subject line if e-mail 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 (http://www.sec.gov/rules/sro.shtml).

[120] 15 U.S.C. 78s(b)(2)(B).

Copies of the filing 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-MEMX-2026-35 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[121]

Vanessa A. Countryman,

Secretary.

[121] 17 CFR 200.30-3(a)(12).