August 24, 2026

VIA ELECTRONIC DELIVERY

Vanessa Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Securities Exchange Act Release No. 105877; File No. SR-CBOE-2026-061

Dear Ms. Countryman:

Cboe Exchange, Inc. (the "Exchange") appreciates the opportunity to respond to comments[1] on the above-referenced rule proposal to permit the listing of binary options overlying certain key performance indicators ("KPIs") reported by certain issuers of stock (the "Proposal"). For the reasons set forth below, in addition to the reasons set forth in the Proposal, the Exchange urges the Securities and Exchange Commission (the "SEC" or "Commission") to approve the Proposal without delay.

I. Executive Summary

The binary KPI options described in the Proposal are securities as defined under Section 3(a)(10) of the Securities Exchange Act of 1934 (the "Act"), and, accordingly, the Commission has authority to approve the Proposal in accordance with Section 19 of the Act. Since the proposed binary KPI options are a type of security, they are not novel instruments, and the commenters have neither raised questions nor asserted any valid reasoning that would justify the Commission in delaying approval of the Proposal. Moreover, given that economically equivalent products are currently traded on designated contract markets ("DCMs") outside of the securities regulatory framework (and its associated market and investor protections), we urge approval of the Proposal.

1 See Letter from Stefan Schropp, Senior Regulatory Counsel, Paradigm Operations LP, dated August 5, 2026 ("Paradigm Letter"); Letter from Thomas Chippas, CEO, Rothera Exchange and Clearing LLC, dated August 5, 2026 ("Rothera Letter"); Letter from Sudhir Jain, Chief Compliance Officer, Kalshi Inc., dated August 5, 2026 ("Kalshi Letter"); Letter from Matt Billings, President, Robinhood Financial LLC and Robinhood Securities, LLC, dated August 5, 2026 ("Robinhood Letter"); Letter from Kevin R. Edgar, Baker Hostetler LLP, on behalf of the Equity Markets Association, dated August 5, 2026 ("EMA Letter").

II. Binary KPI Options Are Properly Classified as Securities Options

The Binary KPI options referenced in the Proposal are securities as defined under Section 3(a)(10) of the Act because they are options "based on the value" of a security or "any interest therein."[2] These KPIs — revenue, earnings per share, net income, and operating and gross margins, among others — are among the most significant measures of a company's financial and operating performance and, accordingly, are considered critical inputs to equity valuation. As the Proposal explains, these metrics "are recognized by investment professionals and analysts as among the most significant inputs into the valuation of an issuer's stock; therefore, a binary option with such an underlying KPI is based on the value of the security to which the KPI relates."[3] Courts have asserted that the definition of "security" is to be read broadly, with emphasis on economic reality.[4] As the Proposal makes clear, the economic reality is that these binary KPI options are securities.

The Commission's 2007 approval of the Exchange's proposal to list credit default options is consistent with the aforementioned point. There, the Commission determined that all-or-nothing, cash-settled options "based on the value [of a security or securities]" are securities within the meaning of Section 3(a)(10) and expressly rejected the notion that a payout untethered to the moment-to-moment price of the underlying security negates securities treatment.[5] The binary KPI options at issue here have a strong and direct nexus to security value in that they reference material aspects of the issuer's actual reported financial or operating performance — the very metrics analysts use to value an issuer's stock. Moreover, the KPIs identified in the Proposal are among the very items that companies are required to disclose (in accordance with SEC reporting obligations) because of the materiality of that information to investors in making an investment decision with respect to the stock.[6]

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[2] 15 U.S.C. § 78c(a)(10) (defining "security" to include "any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof)").

[3] Proposal at 42.

[4] See Caiola v. Citibank, N.A., 295 F.3d 312, 325 (2d Cir. 2002) (quoting United Housing Foundation, Inc. v. Forman, 421 U.S. 837, 848 (1975)) ("In searching for the meaning and scope of the word 'security' . . . the emphasis should be on economic reality.").

[5] See Securities Exchange Act Release No. 55871, 72 FR 32372, 32375–77 (June 12, 2007) (SR-CBOE-2006-84) (the "CD Options Approval").

[6] See Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Rel. No. 8350 (Dec. 19, 2003), 68 FR 75056, 75057 (Dec. 29, 2003) (stating that "companies should identify and discuss key performance indicators, including non-financial performance indicators, that their management uses to manage the business and that would be material to investors"); Commission Guidance on Management's Discussion and Analysis of Financial Condition and Results of Operations, Securities Act Rel. No. 10751 (Jan. 30, 2020), 85 FR 10568, 10569 (Feb. 25, 2020) (stating that "companies should identify and address those key variables and other qualitative and quantitative factors that are peculiar to and necessary for an understanding and evaluation of the individual company[,

One commenter's suggestion that the CD Options Approval is an unreliable precedent — because it predates the Dodd-Frank Act[7] — overlooks a key point: credit default options, in addition to binary options on the S&P 500 Index and Cboe Volatility Index ("VIX Index"), traded on the Exchange as standardized options for years after the Dodd-Frank Act was adopted.[8] Although the Dodd-Frank Act introduced the concept of "swaps" into the statutory regime, the CD Options Approval focused on language that did not change with Dodd-Frank, and the very definition of swap in the Dodd-Frank Act was crafted to exclude that language. Importantly, in the SEC and Commodities Futures Trading Commission ("CFTC") joint rulemaking following adoption of the Dodd-Frank Act, the agencies noted the following: "The statutory definitions of the terms 'swap' and 'security-based swap' are detailed and comprehensive, and the [SEC and CFTC] believe that extensive 'further definition' of the terms by rule is not necessary. Nevertheless, the definitions could be read to include certain types of agreements, contracts, and transactions that previously have not been considered swaps or security-based swaps, and nothing in the legislative history of the Dodd-Frank Act appears to suggest that Congress intended such agreements, contracts, or transactions to be regulated as swaps or security-based swaps under Title VII."[9]

Moreover, Section 712(a)(7)(A) of the Dodd-Frank Act directs that "[i]n adopting rules and orders under this subsection, the [CFTC] and the [SEC] shall treat functionally or economically similar products or entities . . . in a similar manner."[10] The Commodity Futures Modernization Act and Dodd-Frank Act both underscore the importance of equal regulatory treatment for the same types of products to avoid attempts at regulatory arbitrage. That principle strongly supports company-referenced event contracts, including binary KPI options that are the subject of the Proposal, being subject to the same regulations and oversight as other securities.

This concept is certainly not novel. The CFTC has previously recognized — as far back as 1993 — that certain event contracts referencing company KPIs implicate SEC oversight. In a June 18, 1993 no-action letter to the Iowa Electronic Markets ("IEM") — a university-operated prediction market seeking to offer contracts on political, economic, and corporate earnings outcomes — the CFTC's Division of Trading and Markets addressed whether IEM's proposed "Earnings Market"

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and that] [s]uch information could constitute key performance indicators and other metrics") (footnotes omitted).

7 Kalshi Letter at 3.

8 For reference, binary options on the S&P 500 Index traded on the Exchange as standardized options from April 21, 2010, to January 16, 2015; binary options on the VIX Index traded on the Exchange as standardized options from April 21, 2010, to August 16, 2017, and credit default options traded on the Exchange as standardized options from June 19, 2007, to October 2008 and again from April 26, 2011, to December 26, 2014.

9 See Securities Exchange Act Release No. 67453, 77 FR 48208, 48211 (Aug. 13, 2012).

10 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 712(a)(7)(A), 124 Stat. 1376 (2010).

contracts fell within CFTC jurisdiction.[11] The Earnings Market permitted trading in contracts on the projected earnings of several publicly traded companies, including American Airlines, Delta Air Lines, United Airlines, Apple Computer, and IBM. The Division concluded that "…the Earnings Market contracts could be viewed in the nature of options on securities, which may be excluded from the [CFTC's] jurisdiction…but which may be subject to the jurisdiction of the [SEC]."[12] The Division accordingly forwarded the matter to the SEC and suggested that IEM consult the SEC's Division of Market Regulation (now the Division of Trading and Markets).[13]

III. Existing Framework and Process Objections Do Not Justify Deferral

As explained in the Proposal, the binary KPI options described therein are securities and, as such, are not "novel" products. Because they are securities, the Commission has authority to approve their listing on the Exchange in accordance with the rule filing process under Section 19 of the Act. The Exchange has proposed to list classes of standardized securities options, the Proposal has been published for comment, and the Commission has authority to approve the Proposal if the Commission finds the Proposal is consistent with the requirements of the Act, which is the only question germane to the rule filing process. The Exchange has established in the Proposal why it is consistent with the Act, and no commenter has contended otherwise.

The pendency of a separate request for public comment related to derivative product definitions does not suspend the Commission's authority to act on individual self-regulatory organization ("SRO") rule filings that are consistent with the Exchange Act. The purported ambiguity in product classification that certain commenters claim demands deferral in this instance is decidedly not in evidence here: the binary KPI options described in the Proposal are securities that should trade on a national securities exchange, and their regulation falls firmly within the ambit of the Commission and, as applicable, the securities SROs. That certain DCMs currently offer what are effectively binary KPI options as swaps through the CFTC's self-certification process does not nullify or in any way override the proper classification of the products described in the Proposal as securities or the associated conclusion that they properly fall under SEC jurisdiction. Deferral in this instance

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11 Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC, to George R. Neumann, Professor of Economics, University of Iowa (June 18, 1993).

12 Id.

13 Id.; see also Letter from Andrea M. Corcoran, Director, Division of Trading and Markets, CFTC, to Brandon Becker, Acting Director, Division of Trading and Markets, SEC (June 18, 1993). In 2008, the SEC Division of Trading and Markets submitted a comment letter to the CFTC on its concept release on event contracts. See Letter from Eric R. Sirri, Director, Division of Trading and Markets, SEC to David Stawick, Secretary, CFTC (Sept. 3, 2008). In that letter, Director Sirri noted the 1993 referral by the CFTC staff to the SEC staff regarding the IEM request and stated that "event contracts that relate to corporate events, such as mergers or earnings per share announcements, raise even more difficult issues and policy considerations. For instance, there is potential for this type of contract to create a potential for insider trading and an incentive for management to manipulate such accounting measures as earnings per share. Accordingly, the Division is concerned about the effects that trading such contracts may have on securities markets." Id.

would bring no greater clarity to a question to which the answer is already clear, and only highlights the hypocrisy and illogic of these commenters' position when they continue to list binary KPI options.

Commission approval of the Proposal would neither prejudge nor short-circuit other broader definitional questions the Joint Request raises. The CFTC and SEC frameworks differ by design: the CFTC's omission of securities-specific safeguards signals not an institutional shortcoming but a deliberate legislative judgment about the distinct markets and investors each regime was meant to govern. Prompt Commission approval of the Proposal will permit investors to trade these securities on a national securities exchange and benefit from the protections of the securities regulatory framework.

IV. Operational and Clearing Prerequisites Go to Commencement, Not Approval

Certain commenters also assert that approval is premature because Cboe Clear U.S., LLC ("CCUS") has not yet obtained temporary registration as a securities clearing agency with the Commission.[14] Commenters also claim that amendments to the Options Price Reporting Authority ("OPRA") Plan and the Options Listing Procedures Plan ("OLPP") will be necessary conditions for approval.[15] The Exchange believes these assertions are without merit as they conflate approval of the Proposal with the commencement of those activities contemplated by the Proposal and mischaracterize amendments to the OPRA Plan and OLPP as contingencies.

The Commission routinely approves rule changes whose operative effectiveness depends on the later satisfaction of conditions, including clearing arrangements.[16] Neither approval of CCUS's temporary registration as a clearing agency nor the proposed amendments to the OPRA Plan or OLPP are defects in the Proposal itself. Approval of the Proposal merely establishes the regulatory framework under which binary KPI options will be listed and traded on the Exchange and reflects the Commission's determination on the merits of the Proposal and the Proposal's consistency with the Act. Operational readiness — including Commission approval of clearing rules — may be sequenced separately.

Further, amendments to the OPRA Plan and OLPP are not necessary conditions for the listing of binary KPI options on the Exchange. Any contemplated OPRA Plan amendment would address only revenue and fee allocation, and tie-breaking, among participants. If binary KPI options began

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[14] See Paradigm Letter at 4; Rothera Letter at 2–3; Kalshi Letter at 3.

[15] Kalshi Letter at 4; Paradigm Letter at 4.

[16] See, e.g., Securities Exchange Act Release No. 105587, 91 FR 33238 (May 29, 2026) (SR-CboeEDGX-2026-019) (June 3, 2026) (Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Extend the Exchange's Trading Hours to 23 Hours per Day, Five Days per Week). The Commission granted accelerated approval despite the filing having contingencies on industry readiness.

trading on the Exchange before effectiveness of an OPRA Plan amendment, the Exchange would still report quote and trade information for those options to OPRA, and OPRA would still disseminate such information to investors, thus meeting OPRA's primary objective and OPRA Plan requirements. Separately, the OLPP was adopted to establish a standardized certification and listing process for option classes that would accommodate and support listing standardized options by multiple exchanges. At the time of the OLPP's adoption, the OCC was the only registered clearing agency for standardized options and, accordingly, the OCC was specifically named in the OLPP. The OLPP amendment referenced in the Proposal would simply provide that CCUS, as the intended securities clearing agency for the binary KPI options, will abide by the same listing procedures as currently applicable to OCC in the current OLPP. CCUS is prepared to abide by these procedures, regardless of whether an OLPP amendment is formally in place at the time that the binary KPI options begin to trade.

V. Conclusion

For the foregoing reasons, we respectfully urge the Commission to approve the Proposal without delay.

Respectfully submitted,

/s/ Laura G. Dickman

Laura G. Dickman

Vice President, Associate General Counsel
Cboe Exchange, Inc.