

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 37

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2026 - \* 035

Amendment No. (req. for Amendments \*)

Filing by Cboe Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to amend Rule 4.21 (Series of FLEX Options).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sarah Last Name \* Tadtman

Title \* Assistant General Counsel

E-mail \* stadtman@cboe.com

Telephone \* (913) 815-7203 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Cboe Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 04/09/2026

(Title \*)

By Laura G. Dickman (Name \*)

VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

*Laura Dickman* Date: 2026.04.09 11:52:39 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

**Form 19b-4 Information \***

Add Remove View

26-035 19b-4 (Cash-Settled ETF Opti

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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26-035 Exhibit 1 (Cash-Settled ETF O

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

26-035 Exhibit 5 (Cash-Settled ETF O

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1. Text of the Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Exchange Act” or the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe Exchange, Inc. (“Cboe” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to amend Rule 4.21 (Series of FLEX Options). The proposed amendment relates to Flexible Exchange (“FLEX”) Equity Options where the underlying security is an exchange-traded fund (“ETF”) that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the requirements of Rule 4.21(b)(5)(A)(ii) at the time of the Exchange’s bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs.

(b) Not applicable.

(c) Not applicable.

**Item 2. Procedures of the Self-Regulatory Organization**

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on April 2, 2026.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, (913) 424-2970, Cboe Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

**Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend Rule 4.21 (Series of FLEX Options), as it relates to FLEX Equity Options where the underlying security is an ETF that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the requirements of Rule 4.21(b)(5)(A)(ii) at the time of the Exchange's bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs.

**Background**

Prior to the adoption of the rules described herein, FLEX Equity Options were generally required to be settled by physical delivery of the underlying security upon exercise. FLEX Index Options, by contrast, have long been settled by delivery in cash. Cash settlement was also available for customized equity options transacted in the over-the-counter ("OTC") market, where settlement restrictions do not apply. The absence of a cash-settled exchange-traded alternative for equity-based FLEX Options created a gap

between the exchange-traded and OTC markets that exchange-traded participants sought to bridge.

On August 1, 2023, the Exchange submitted a filing with the Commission, which became immediately effective, adopting cash settlement as an optional contract term for certain FLEX Equity Options where the underlying security is an ETF.<sup>3</sup> Specifically, Rule 4.21(b)(5)(A)(ii) permits cash settlement for FLEX Equity Options where the underlying ETF has, measured over the prior six-month period, an average daily notional value of \$500 million or more and a national average daily volume (“ADV”) of at least 4,680,000 shares.

The Exchange adopted these specific thresholds to limit cash-settled FLEX ETF Options to the most highly liquid and actively-traded ETFs, thereby mitigating concerns about susceptibility to manipulation at settlement. With respect to the notional value threshold, the Exchange determined that average daily notional value is an appropriate proxy for manipulation resistance because, as a general matter, the more expensive an underlying ETF’s price, the less cost-effective manipulation becomes, and the more volume traded in an ETF, the more difficult manipulation of its price becomes. With respect to the ADV threshold, the Exchange determined that a requirement of 4,680,000 shares per day is appropriate because it represents average trading in the underlying ETF of approximately 200 shares per second, a level of continuous trading activity that the Exchange believes meaningfully limits the ability to influence the ETF’s price for purposes of establishing a settlement value. The Exchange acknowledged that no security is immune

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<sup>3</sup> See Securities Exchange Act No. 98044 (August 2, 2023) 88 FR 53548 (August 8, 2023) (SR-CBOE-2023-036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled).

from all manipulation, but determined that the combination of these two requirements would appropriately limit cash settlement of FLEX ETF Options to underlying securities that are less susceptible to manipulation.

Under this framework, the Exchange conducts a bi-annual review on January 1 and July 1 of each year to identify qualifying ETFs, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. The rule caps the number of eligible underlying ETFs at 50; if more than 50 ETFs satisfy the criteria, the Exchange selects the top 50 by highest ADV. This cap was designed to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the requirements remains reasonable, while still providing flexibility to add ETFs given that the initial list of eligible ETFs numbered well below 50 at the time of adoption. In the event a previously eligible ETF fails to satisfy the criteria at the time of a bi-annual review, any new positions overlying that ETF must be physically settled and any existing open cash-settled positions may be traded only to close. This provision was designed to address how to wind down outstanding cash-settled positions in an ETF that no longer qualifies under the liquidity and volume criteria, thereby addressing manipulation concerns while still permitting market participants to exit existing positions.

In connection with the adoption of this framework, the Exchange committed to conducting a five-year review of cash-settled FLEX ETF Option trading activity and furnishing the Commission with five annual reports. Pursuant to this commitment, the Exchange has submitted two annual monitoring reports to the Commission covering the periods of August 1, 2023 through July 31, 2024 and August 1, 2024 through July 31, 2025,

respectively. The reports assessed trading volume and open interest in cash-settled FLEX ETF options relative to physically settled options on the same underlying ETFs, market maker participation, position limit activity, and manipulation concerns. The Exchange had no recommendations for enhancements to the listing standards based on either review.

In both review periods, neither the Exchange nor any affiliated Cboe securities exchange had an open investigation, inquiry, or enforcement matter relating to the manipulation of cash-settled FLEX ETF options or their underlying ETFs. Financial Industry Regulatory Authority (“FINRA”), acting as the Exchange’s regulatory services provider for position limit surveillance, confirmed the same finding for both periods. While both reports note that certain regulatory matters arose during each period involving the applicable ETFs or related physically-settled options, the Exchange’s surveillance and investigatory staff confirmed in each instance that the activity did not appear to relate to manipulation of an ETF for the purpose of benefiting a cash-settled FLEX ETF option position.

Both review periods reflected broad and stable market maker participation across the eligible underlying ETFs. The highest levels of FLEX market maker participation were observed in SPY (9 to 12 per month), QQQ (6 to 10 per month), and IWM (3 to 15 per month). Participation in less actively traded eligible ETFs was more limited but consistent across both periods, reflecting a well-supported and liquid product across the eligible universe.

### **Proposal**

The Exchange proposes to amend Rule 4.21(b)(5)(A)(ii) to refine two aspects of the framework governing cash-settled FLEX ETF Options and to eliminate the 50-ETF

cap. First, the Exchange proposes to permit newly FLEX-eligible ETFs to qualify for cash settlement as a contract term based on one month of trading statistics outside of the Exchange's regular bi-annual review cycle. Second, the Exchange proposes to replace the existing provision governing ETFs that cease to satisfy the eligibility criteria with a tiered framework that more precisely calibrates treatment to the actual state of open interest in cash-settled FLEX ETF Options overlying the affected ETF. Third, the Exchange proposes to eliminate the existing cap limiting cash settlement as a contract term to no more than 50 underlying ETFs.

*One-Month Lookback for Newly Eligible ETFs*

Under the current rule, the Exchange determines eligible underlying ETFs bi-annually, on January 1 and July 1 of each year, using six months of prior trading statistics, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. No mechanism currently exists to add newly FLEX-eligible ETFs to the eligible list between bi-annual reviews. As a result, an ETF that becomes FLEX-eligible after a bi-annual review has been conducted may not be considered for cash-settled FLEX ETF Option eligibility for up to six months, even if it otherwise satisfies the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange proposes to address this gap by permitting, outside of the regular bi-annual review, the Exchange to determine that a newly FLEX-eligible ETF satisfies the notional value and trading volume requirements based on the previous one-month period of trading statistics. Any ETF satisfying such requirements on that basis shall be eligible for cash settlement as a contract term.

The Exchange believes a one-month lookback is appropriate in this context because an ETF that has newly become FLEX-eligible and simultaneously satisfies both the \$500 million average daily notional value threshold and the 4,680,000-share ADV requirement over the prior month has already demonstrated the degree of liquidity and trading activity that the eligibility criteria are designed to capture. The Exchange believes its annual monitoring reports demonstrate the existing criteria have proven to be an effective proxy for identifying ETFs that are not readily susceptible to manipulation. Requiring newly eligible ETFs to await the next bi-annual review before becoming eligible for cash settlement would delay investor access to the product.

*Tiered Criteria for ETFs Ceasing to Satisfy Eligibility Requirements*

Under the current rule, if the Exchange determines at the time of a bi-annual review that an underlying ETF ceases to satisfy the eligibility criteria, any new position overlying that ETF must be physically settled and any existing open cash-settled positions may be traded only to close. While this provision addresses the wind-down of cash-settled activity in a straightforward manner, it does not distinguish between ETFs with active open interest and those with no meaningful cash-settled activity, nor does it account for the possibility that an ETF may temporarily fall below the eligibility thresholds and subsequently recover.

The Exchange proposes to replace this provision with a tiered framework that more precisely calibrates the treatment of an ineligible ETF to the actual state of the market for cash-settled FLEX ETF Options overlying that ETF. Under the proposed framework, if no open interest in cash-settled FLEX Equity Options overlying the ETF exists during the previous six-month period at the time of the bi-annual review determination, the existing treatment will apply: any new position must be physically settled and any open cash-settled

positions may be traded only to close. Where open interest in cash-settled FLEX Equity Options overlying the ETF does exist during the previous six-month period, the Exchange will permit the opening of new cash-settled positions in that ETF for a period of one year from the date of the bi-annual review, after which any new position must be physically settled and any remaining open cash-settled positions may be traded only to close. This one-year continuation period is intended to provide market participants holding or seeking to manage existing cash-settled positions with a reasonable and predictable runway to do so, rather than abruptly restricting new position activity at the time of the bi-annual review determination.

The proposed framework also includes a recovery provision: if the underlying ETF satisfies the eligibility criteria at the time of either bi-annual review conducted during the one-year continuation period, that period will terminate and the ETF will resume full eligibility for cash settlement as a contract term. The Exchange believes this provision appropriately accounts for the possibility that an ETF's trading statistics may fluctuate around the eligibility thresholds and prevents an unnecessarily disruptive wind-down in cases where the ETF promptly returns to eligibility.

#### *Elimination of the 50-ETF Cap*

The Exchange also proposes to eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of ETFs satisfying the eligibility criteria remained well below 50 during the initial period of the program's

operation, the number of qualifying ETFs has grown over the two-year period to exceed that threshold,<sup>4</sup> such that the cap now operates as an active constraint on the availability of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The Exchange does not believe this result is consistent with the purpose of the cap, which was intended as a programmatic guardrail rather than a permanent numerical ceiling. As noted above, the Exchange's two annual reviews have identified no manipulation concerns. Given the same eligibility criteria and position and exercise limits would apply to any cash-settled FLEX ETF option, as would the Exchange's surveillance program, the Exchange believes the 50-ETF cap is no longer necessary. The Exchange believes these protections and the eligibility criteria themselves sufficiently mitigate any manipulation concerns associated with cash-settled FLEX ETF Options.

The Exchange also notes that, consistent with its commitment in the original proposal, it will continue to furnish the Commission with annual reports for the remainder of the five-year review period. The Exchange believes that the continued reporting commitment, together with the proposed amendments, appropriately positions the cash-settled FLEX ETF Option framework to address the operational gaps identified through the Exchange's review to date while preserving the monitoring mechanisms that allow the Exchange and the Commission to evaluate the ongoing impact of the program.

(b) 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

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<sup>4</sup> As of February 1, 2026, 60 ETFs were eligible.

requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act because each of the proposed amendments is designed to refine an existing, Commission-approved framework in a manner that is reasonably calibrated to address identified operational gaps while preserving and reinforcing the manipulation-mitigating features of that framework.

*One-Month Lookback for Newly Eligible ETFs*

The Exchange believes the proposed one-month lookback for newly FLEX-eligible ETFs is consistent with the Act because it removes an impediment to the offering of cash-settled FLEX ETF Options on ETFs that have already demonstrated the liquidity and trading activity that the eligibility criteria are designed to capture, without compromising the manipulation-resistant features of those criteria. Under the current rule, an ETF that becomes FLEX-eligible<sup>7</sup> after a bi-annual review has been conducted must wait up to six

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> For example, an ETF option may become eligible to be listed on the Exchange (and FLEX eligible) on January 15, but even if it satisfies the cash-settled FLEX criteria well before the next bi-annual review in July, the ETF would not be eligible for cash-settled FLEX until that July review.

months before it may be considered for cash-settled FLEX ETF Option eligibility, even if it satisfies both the \$500 million average daily notional value threshold and the 4,680,000-share ADV requirement at the time it becomes FLEX-eligible. The Exchange believes this gap is not necessary to protect against manipulation. An ETF that satisfies both thresholds over the prior one-month period has demonstrated the same depth of liquidity and breadth of trading activity that the six-month bi-annual review is designed to identify as indicative of reduced susceptibility to manipulation. As noted above, the Exchange's annual monitoring reports have demonstrated the existing eligibility criteria are an effective and reliable proxy for identifying ETFs that are not readily susceptible to manipulation, and the Exchange has identified no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs during that period. The Exchange therefore believes that permitting a one-month lookback for newly FLEX-eligible ETFs between bi-annual reviews removes an impediment to and perfects the mechanism of a free and open market and protects investors and the public interest by providing timely investor access to a cash-settlement alternative on ETFs that satisfy the established eligibility criteria, while maintaining the protections afforded by those criteria.<sup>8</sup>

*Tiered Criteria for ETFs Ceasing to Satisfy Eligibility Requirements.*

The Exchange believes the proposed tiered framework for ETFs that cease to satisfy the eligibility criteria at the time of a bi-annual review is consistent with the Act because it is reasonably designed to prevent fraudulent and manipulative acts and practices while also promoting just and equitable principles of trade and protecting investors. The current rule

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<sup>8</sup> This is a similar concept to the one in Rule 4.3, Interpretation and Policy .01(b)(2) that permits "expedited" listing of options on securities with significant market capitalization at their initial public offerings.

applies a single, uniform wind-down treatment to any ETF that falls below the eligibility thresholds at bi-annual review, regardless of whether active open interest in cash-settled FLEX ETF Options overlying that ETF exists. The Exchange believes this one-size-fits-all approach does not adequately account for the legitimate interests of market participants that hold existing cash-settled positions or that need the ability to open new positions to manage existing risk exposure in an ETF that has temporarily fallen below the thresholds.

The proposed tiered framework addresses this concern in a manner consistent with the Act's investor protection and anti-manipulation objectives. Where no open interest in cash-settled FLEX ETF Options overlying the affected ETF has existed during the previous six-month period, the current treatment would continue to apply, because the Exchange believes an immediate restriction on new cash-settled positions would not disrupt market participants' activity. Where open interest does exist at the time of the bi-annual review, the proposed one-year continuation period provides market participants with a reasonable and predictable runway to manage existing positions, which the Exchange believes promotes just and equitable principles of trade. The Exchange further believes that the recovery provision, under which the continuation period terminates and full eligibility is restored if the ETF satisfies the criteria at either bi-annual review during the one-year period, is consistent with the Act because it prevents an unnecessarily disruptive wind-down where an ETF's trading statistics temporarily dip below the eligibility thresholds and then recover, and it reinforces the principle that the eligibility criteria, rather than arbitrary timing, are the appropriate determinant of cash-settlement eligibility. Taken together, the Exchange believes the tiered framework is a reasonable means to address manipulation

concerns while not unduly burdening market participants with existing cash-settled positions, as it eliminates the current immediate disruption to their investment strategies.

*Elimination of the 50-ETF Cap*

The Exchange believes the elimination of the 50-ETF cap is consistent with the Act because the cap is no longer necessary to protect against the concerns it was designed to address and, as currently operative, functions as an impediment to the offering of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of qualifying ETFs remained well below 50 during the initial period of the program's operation, that number has more recently grown to exceed the cap, such that the cap now actively restricts the availability of cash-settled FLEX ETF Options on ETFs that fully satisfy the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange believes that retaining this arbitrary restriction is inconsistent with the Act's objectives because the two-year monitoring record demonstrates that the eligibility criteria themselves limit the availability of cash settlement to FLEX ETF Options. The liquidity and trading activity requirements mitigate manipulation concerns for any ETF that satisfies those requirements, not just the top 50. During the first two years of availability of cash-settled FLEX ETF Options, the Exchange has identified (and its annual monitoring reports demonstrated) no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs. The Exchange believes the eligibility criteria, position and exercise limits, and surveillance program applicable to the 50 ETFs eligible for FLEX

options with cash-settlement provide adequate protections against manipulation and market disruption to all ETFs that satisfy the criteria, regardless of the number of qualifying ETFs. The Exchange therefore believes that eliminating the cap removes an impediment to and perfects the mechanism of a free and open market, protects investors and the public interest, and is otherwise consistent with the Act.

**Item 4. 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 the proposed rule change will impose any burden on intramarket competition. The proposed amendments apply uniformly to all market participants that trade cash-settled FLEX ETF Options on the Exchange. All newly FLEX-eligible ETFs would be eligible for the one-month lookback, and any ETF that satisfies the eligibility criteria within that one-month lookback would be eligible for cash-settlement, and cash-settled FLEX options on such ETFs would be available to all market participants. The tiered framework for ETFs ceasing to satisfy the eligibility criteria applies in the same manner to all market participants holding or seeking to open positions in cash-settled FLEX ETF Options overlying the affected ETF, and the one-year continuation period and recovery provision provide all such participants with the same predictable and equitable treatment. The elimination of the 50-ETF cap permits any ETF that satisfies the eligibility criteria to be eligible for FLEX cash-settlement rather than arbitrarily restricting that product availability to 50 ETFs. The Exchange believes the proposed rule promotes

competition, as it would treat all ETFs that satisfy the eligibility criteria for cash-settled FLEX Options in the same manner.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. Cash-settled FLEX ETF Options with the same underlying ETF may be listed on multiple exchanges, and the proposed amendments do not restrict the ability of other exchanges to adopt similar or competing frameworks.

**Item 5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

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

**Item 6. Extension of Time Period for Commission Action**

The Exchange does not consent to an extension of the time period for Commission action on the proposed rule change specified in Section 19(b)(2) of the Act.<sup>9</sup>

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

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<sup>9</sup> 15 U.S.C. 78s(b)(2).

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11. Exhibits**

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CBOE-2026-035]

[Insert date]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 4.21 (Series of FLEX Options)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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**

Cboe Exchange, Inc. (“Cboe” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to amend Rule 4.21 (Series of FLEX Options). The proposed amendment relates to Flexible Exchange (“FLEX”) Equity Options where the underlying security is an exchange-traded fund (“ETF”) that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

requirements of Rule 4.21(b)(5)(A)(ii) at the time of the Exchange's bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs. The text of the proposed rule change is provided in Exhibit 5.

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

## **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 amend Rule 4.21 (Series of FLEX Options), as it relates to FLEX Equity Options where the underlying security is an ETF that is eligible for cash settlement. Specifically, the proposed amendments would: (1) permit newly FLEX-eligible ETFs that satisfy the requirements of Rule 4.21(b)(5)(A)(ii) based on the previous one-month period of trading statistics to be eligible for cash settlement as a contract term; (2) establish tiered criteria governing the treatment of cash-settled FLEX ETF Options where the underlying ETF ceases to satisfy the requirements of Rule 4.21(b)(5)(A)(ii) at the time

of the Exchange's bi-annual review; and (3) eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs.

### **Background**

Prior to the adoption of the rules described herein, FLEX Equity Options were generally required to be settled by physical delivery of the underlying security upon exercise. FLEX Index Options, by contrast, have long been settled by delivery in cash. Cash settlement was also available for customized equity options transacted in the over-the-counter ("OTC") market, where settlement restrictions do not apply. The absence of a cash-settled exchange-traded alternative for equity-based FLEX Options created a gap between the exchange-traded and OTC markets that exchange-traded participants sought to bridge.

On August 1, 2023, the Exchange submitted a filing with the Commission, which became immediately effective, adopting cash settlement as an optional contract term for certain FLEX Equity Options where the underlying security is an ETF.<sup>3</sup> Specifically, Rule 4.21(b)(5)(A)(ii) permits cash settlement for FLEX Equity Options where the underlying ETF has, measured over the prior six-month period, an average daily notional value of \$500 million or more and a national average daily volume ("ADV") of at least 4,680,000 shares.

The Exchange adopted these specific thresholds to limit cash-settled FLEX ETF Options to the most highly liquid and actively-traded ETFs, thereby mitigating concerns about susceptibility to manipulation at settlement. With respect to the notional value

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<sup>3</sup> See Securities Exchange Act No. 98044 (August 2, 2023) 88 FR 53548 (August 8, 2023) (SR-CBOE-2023-036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled).

threshold, the Exchange determined that average daily notional value is an appropriate proxy for manipulation resistance because, as a general matter, the more expensive an underlying ETF's price, the less cost-effective manipulation becomes, and the more volume traded in an ETF, the more difficult manipulation of its price becomes. With respect to the ADV threshold, the Exchange determined that a requirement of 4,680,000 shares per day is appropriate because it represents average trading in the underlying ETF of approximately 200 shares per second, a level of continuous trading activity that the Exchange believes meaningfully limits the ability to influence the ETF's price for purposes of establishing a settlement value. The Exchange acknowledged that no security is immune from all manipulation, but determined that the combination of these two requirements would appropriately limit cash settlement of FLEX ETF Options to underlying securities that are less susceptible to manipulation.

Under this framework, the Exchange conducts a bi-annual review on January 1 and July 1 of each year to identify qualifying ETFs, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. The rule caps the number of eligible underlying ETFs at 50; if more than 50 ETFs satisfy the criteria, the Exchange selects the top 50 by highest ADV. This cap was designed to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the requirements remains reasonable, while still providing flexibility to add ETFs given that the initial list of eligible ETFs numbered well below 50 at the time of adoption. In the event a previously eligible ETF fails to satisfy the criteria at the time of a bi-annual review, any new positions overlying that ETF must be physically settled and any existing open cash-settled positions may be

traded only to close. This provision was designed to address how to wind down outstanding cash-settled positions in an ETF that no longer qualifies under the liquidity and volume criteria, thereby addressing manipulation concerns while still permitting market participants to exit existing positions.

In connection with the adoption of this framework, the Exchange committed to conducting a five-year review of cash-settled FLEX ETF Option trading activity and furnishing the Commission with five annual reports. Pursuant to this commitment, the Exchange has submitted two annual monitoring reports to the Commission covering the periods of August 1, 2023 through July 31, 2024 and August 1, 2024 through July 31, 2025, respectively. The reports assessed trading volume and open interest in cash-settled FLEX ETF options relative to physically settled options on the same underlying ETFs, market maker participation, position limit activity, and manipulation concerns. The Exchange had no recommendations for enhancements to the listing standards based on either review.

In both review periods, neither the Exchange nor any affiliated Cboe securities exchange had an open investigation, inquiry, or enforcement matter relating to the manipulation of cash-settled FLEX ETF options or their underlying ETFs. Financial Industry Regulatory Authority (“FINRA”), acting as the Exchange’s regulatory services provider for position limit surveillance, confirmed the same finding for both periods. While both reports note that certain regulatory matters arose during each period involving the applicable ETFs or related physically-settled options, the Exchange’s surveillance and investigatory staff confirmed in each instance that the activity did not appear to relate to manipulation of an ETF for the purpose of benefiting a cash-settled FLEX ETF option position.

Both review periods reflected broad and stable market maker participation across the eligible underlying ETFs. The highest levels of FLEX market maker participation were observed in SPY (9 to 12 per month), QQQ (6 to 10 per month), and IWM (3 to 15 per month). Participation in less actively traded eligible ETFs was more limited but consistent across both periods, reflecting a well-supported and liquid product across the eligible universe.

### **Proposal**

The Exchange proposes to amend Rule 4.21(b)(5)(A)(ii) to refine two aspects of the framework governing cash-settled FLEX ETF Options and to eliminate the 50-ETF cap. First, the Exchange proposes to permit newly FLEX-eligible ETFs to qualify for cash settlement as a contract term based on one month of trading statistics outside of the Exchange's regular bi-annual review cycle. Second, the Exchange proposes to replace the existing provision governing ETFs that cease to satisfy the eligibility criteria with a tiered framework that more precisely calibrates treatment to the actual state of open interest in cash-settled FLEX ETF Options overlying the affected ETF. Third, the Exchange proposes to eliminate the existing cap limiting cash settlement as a contract term to no more than 50 underlying ETFs.

#### *One-Month Lookback for Newly Eligible ETFs*

Under the current rule, the Exchange determines eligible underlying ETFs bi-annually, on January 1 and July 1 of each year, using six months of prior trading statistics, with newly eligible ETFs permitted to list cash-settled FLEX options beginning on February 1 and August 1, respectively. No mechanism currently exists to add newly FLEX-eligible ETFs to the eligible list between bi-annual reviews. As a result, an ETF that

becomes FLEX-eligible after a bi-annual review has been conducted may not be considered for cash-settled FLEX ETF Option eligibility for up to six months, even if it otherwise satisfies the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange proposes to address this gap by permitting, outside of the regular bi-annual review, the Exchange to determine that a newly FLEX-eligible ETF satisfies the notional value and trading volume requirements based on the previous one-month period of trading statistics. Any ETF satisfying such requirements on that basis shall be eligible for cash settlement as a contract term.

The Exchange believes a one-month lookback is appropriate in this context because an ETF that has newly become FLEX-eligible and simultaneously satisfies both the \$500 million average daily notional value threshold and the 4,680,000-share ADV requirement over the prior month has already demonstrated the degree of liquidity and trading activity that the eligibility criteria are designed to capture. The Exchange believes its annual monitoring reports demonstrate the existing criteria have proven to be an effective proxy for identifying ETFs that are not readily susceptible to manipulation. Requiring newly eligible ETFs to await the next bi-annual review before becoming eligible for cash settlement would delay investor access to the product.

*Tiered Criteria for ETFs Ceasing to Satisfy Eligibility Requirements*

Under the current rule, if the Exchange determines at the time of a bi-annual review that an underlying ETF ceases to satisfy the eligibility criteria, any new position overlying that ETF must be physically settled and any existing open cash-settled positions may be traded only to close. While this provision addresses the wind-down of cash-settled activity in a straightforward manner, it does not distinguish between ETFs with active open interest

and those with no meaningful cash-settled activity, nor does it account for the possibility that an ETF may temporarily fall below the eligibility thresholds and subsequently recover.

The Exchange proposes to replace this provision with a tiered framework that more precisely calibrates the treatment of an ineligible ETF to the actual state of the market for cash-settled FLEX ETF Options overlying that ETF. Under the proposed framework, if no open interest in cash-settled FLEX Equity Options overlying the ETF exists during the previous six-month period at the time of the bi-annual review determination, the existing treatment will apply: any new position must be physically settled and any open cash-settled positions may be traded only to close. Where open interest in cash-settled FLEX Equity Options overlying the ETF does exist during the previous six-month period, the Exchange will permit the opening of new cash-settled positions in that ETF for a period of one year from the date of the bi-annual review, after which any new position must be physically settled and any remaining open cash-settled positions may be traded only to close. This one-year continuation period is intended to provide market participants holding or seeking to manage existing cash-settled positions with a reasonable and predictable runway to do so, rather than abruptly restricting new position activity at the time of the bi-annual review determination.

The proposed framework also includes a recovery provision: if the underlying ETF satisfies the eligibility criteria at the time of either bi-annual review conducted during the one-year continuation period, that period will terminate and the ETF will resume full eligibility for cash settlement as a contract term. The Exchange believes this provision appropriately accounts for the possibility that an ETF's trading statistics may fluctuate

around the eligibility thresholds and prevents an unnecessarily disruptive wind-down in cases where the ETF promptly returns to eligibility.

*Elimination of the 50-ETF Cap*

The Exchange also proposes to eliminate the existing provision limiting cash settlement as a contract term to no more than 50 underlying ETFs. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of ETFs satisfying the eligibility criteria remained well below 50 during the initial period of the program's operation, the number of qualifying ETFs has grown over the two-year period to exceed that threshold,<sup>4</sup> such that the cap now operates as an active constraint on the availability of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The Exchange does not believe this result is consistent with the purpose of the cap, which was intended as a programmatic guardrail rather than a permanent numerical ceiling. As noted above, the Exchange's two annual reviews have identified no manipulation concerns. Given the same eligibility criteria and position and exercise limits would apply to any cash-settled FLEX ETF option, as would the Exchange's surveillance program, the Exchange believes the 50-ETF cap is no longer necessary. The Exchange believes these protections and the eligibility criteria themselves sufficiently mitigate any manipulation concerns associated with cash-settled FLEX ETF Options.

The Exchange also notes that, consistent with its commitment in the original proposal, it will continue to furnish the Commission with annual reports for the remainder

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<sup>4</sup> As of February 1, 2026, 60 ETFs were eligible.

of the five-year review period. The Exchange believes that the continued reporting commitment, together with the proposed amendments, appropriately positions the cash-settled FLEX ETF Option framework to address the operational gaps identified through the Exchange's review to date while preserving the monitoring mechanisms that allow the Exchange and the Commission to evaluate the ongoing impact of the program.

## 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.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes the proposed rule change is consistent with Section 6(b)(5) of the Act because each of the proposed amendments is designed to refine an existing, Commission-approved framework in a manner that is reasonably calibrated to address identified operational gaps while preserving and reinforcing the manipulation-mitigating features of that framework.

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<sup>5</sup> 15 U.S.C. 78f(b).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

*One-Month Lookback for Newly Eligible ETFs*

The Exchange believes the proposed one-month lookback for newly FLEX-eligible ETFs is consistent with the Act because it removes an impediment to the offering of cash-settled FLEX ETF Options on ETFs that have already demonstrated the liquidity and trading activity that the eligibility criteria are designed to capture, without compromising the manipulation-resistant features of those criteria. Under the current rule, an ETF that becomes FLEX-eligible<sup>7</sup> after a bi-annual review has been conducted must wait up to six months before it may be considered for cash-settled FLEX ETF Option eligibility, even if it satisfies both the \$500 million average daily notional value threshold and the 4,680,000-share ADV requirement at the time it becomes FLEX-eligible. The Exchange believes this gap is not necessary to protect against manipulation. An ETF that satisfies both thresholds over the prior one-month period has demonstrated the same depth of liquidity and breadth of trading activity that the six-month bi-annual review is designed to identify as indicative of reduced susceptibility to manipulation. As noted above, the Exchange's annual monitoring reports have demonstrated the existing eligibility criteria are an effective and reliable proxy for identifying ETFs that are not readily susceptible to manipulation, and the Exchange has identified no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs during that period. The Exchange therefore believes that permitting a one-month lookback for newly FLEX-eligible ETFs between bi-annual reviews removes an impediment to and perfects the mechanism of a free and open market and protects investors and the public interest by providing timely investor access to a cash-

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<sup>7</sup> For example, an ETF option may become eligible to be listed on the Exchange (and FLEX eligible) on January 15, but even if it satisfies the cash-settled FLEX criteria well before the next bi-annual review in July, the ETF would not be eligible for cash-settled FLEX until that July review.

settlement alternative on ETFs that satisfy the established eligibility criteria, while maintaining the protections afforded by those criteria.<sup>8</sup>

*Tiered Criteria for ETFs Ceasing to Satisfy Eligibility Requirements.*

The Exchange believes the proposed tiered framework for ETFs that cease to satisfy the eligibility criteria at the time of a bi-annual review is consistent with the Act because it is reasonably designed to prevent fraudulent and manipulative acts and practices while also promoting just and equitable principles of trade and protecting investors. The current rule applies a single, uniform wind-down treatment to any ETF that falls below the eligibility thresholds at bi-annual review, regardless of whether active open interest in cash-settled FLEX ETF Options overlying that ETF exists. The Exchange believes this one-size-fits-all approach does not adequately account for the legitimate interests of market participants that hold existing cash-settled positions or that need the ability to open new positions to manage existing risk exposure in an ETF that has temporarily fallen below the thresholds.

The proposed tiered framework addresses this concern in a manner consistent with the Act's investor protection and anti-manipulation objectives. Where no open interest in cash-settled FLEX ETF Options overlying the affected ETF has existed during the previous six-month period, the current treatment would continue to apply, because the Exchange believes an immediate restriction on new cash-settled positions would not disrupt market participants' activity. Where open interest does exist at the time of the bi-annual review, the proposed one-year continuation period provides market participants with a reasonable and predictable runway to manage existing positions, which the Exchange believes

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<sup>8</sup> This is a similar concept to the one in Rule 4.3, Interpretation and Policy .01(b)(2) that permits "expedited" listing of options on securities with significant market capitalization at their initial public offerings.

promotes just and equitable principles of trade. The Exchange further believes that the recovery provision, under which the continuation period terminates and full eligibility is restored if the ETF satisfies the criteria at either bi-annual review during the one-year period, is consistent with the Act because it prevents an unnecessarily disruptive wind-down where an ETF's trading statistics temporarily dip below the eligibility thresholds and then recover, and it reinforces the principle that the eligibility criteria, rather than arbitrary timing, are the appropriate determinant of cash-settlement eligibility. Taken together, the Exchange believes the tiered framework is a reasonable means to address manipulation concerns while not unduly burdening market participants with existing cash-settled positions, as it eliminates the current immediate disruption to their investment strategies.

*Elimination of the 50-ETF Cap*

The Exchange believes the elimination of the 50-ETF cap is consistent with the Act because the cap is no longer necessary to protect against the concerns it was designed to address and, as currently operative, functions as an impediment to the offering of cash-settled FLEX ETF Options on ETFs that otherwise satisfy the established eligibility criteria. The cap was adopted at the outset of the program to prevent the scope of cash-settled FLEX ETF Options from expanding considerably without a corresponding evaluation of whether the level of the eligibility requirements remained reasonable. While the number of qualifying ETFs remained well below 50 during the initial period of the program's operation, that number has more recently grown to exceed the cap, such that the cap now actively restricts the availability of cash-settled FLEX ETF Options on ETFs that fully satisfy the notional value and ADV requirements of Rule 4.21(b)(5)(A)(ii). The Exchange believes that retaining this arbitrary restriction is inconsistent with the Act's

objectives because the two-year monitoring record demonstrates that the eligibility criteria themselves limit the availability of cash settlement to FLEX ETF Options. The liquidity and trading activity requirements mitigate manipulation concerns for any ETF that satisfies those requirements, not just the top 50. During the first two years of availability of cash-settled FLEX ETF Options, the Exchange has identified (and its annual monitoring reports demonstrated) no manipulation concerns in connection with cash-settled FLEX ETF Options or their underlying ETFs. The Exchange believes the eligibility criteria, position and exercise limits, and surveillance program applicable to the 50 ETFs eligible for FLEX options with cash-settlement provide adequate protections against manipulation and market disruption to all ETFs that satisfy the criteria, regardless of the number of qualifying ETFs. The Exchange therefore believes that eliminating the cap removes an impediment to and perfects the mechanism of a free and open market, protects investors and the public interest, and is otherwise consistent with the Act.

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 the proposed rule change will impose any burden on intramarket competition. The proposed amendments apply uniformly to all market participants that trade cash-settled FLEX ETF Options on the Exchange. All newly FLEX-eligible ETFs would be eligible for the one-month lookback, and any ETF that satisfies the eligibility criteria within that one-month lookback would be eligible for cash-settlement, and cash-settled FLEX options on such ETFs would be available to all market participants. The tiered framework for ETFs ceasing to satisfy the eligibility criteria applies in the same

manner to all market participants holding or seeking to open positions in cash-settled FLEX ETF Options overlying the affected ETF, and the one-year continuation period and recovery provision provide all such participants with the same predictable and equitable treatment. The elimination of the 50-ETF cap permits any ETF that satisfies the eligibility criteria to be eligible for FLEX cash-settlement rather than arbitrarily restricting that product availability to 50 ETFs. The Exchange believes the proposed rule promotes competition, as it would treat all ETFs that satisfy the eligibility criteria for cash-settled FLEX Options in the same manner.

The Exchange does not believe the proposed rule change will impose any burden on intermarket competition. Cash-settled FLEX ETF Options with the same underlying ETF may be listed on multiple exchanges, and the proposed amendments do not restrict the ability of other exchanges to adopt similar or competing frameworks.

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 comments on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2026-035 on the subject line.

##### Paper Comments:

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

All submissions should refer to file number SR-CBOE-2026-035. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CBOE-2026-035 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>9</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

\* \* \* \* \*

**Rule 4.21. Series of FLEX Options**

(a) No change.

(b) *Terms.* When submitting a FLEX Order for a FLEX Option series to the System, the submitting FLEX Trader must include one of each of the following terms in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), provided that a FLEX Index Option with an index multiplier of one may not be the same type (put or call) and may not have the same exercise style, expiration date, settlement type, and exercise price as a non-FLEX Index Option overlying the same index listed for trading (regardless of the index multiplier of the non-FLEX Index Option) and further provided that a FLEX Equity Option overlying an ETF (cash- or physically settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF, which terms constitute the FLEX Option series:

(1)-(4) No change.

(5) settlement type:

(A) *FLEX Equity Options.*

(i) No change.

(ii) [For] FLEX Equity Options with an underlying security that is an ETF that has an average daily notional value of \$500 million or more and a national average daily volume of at least 4,680,000 shares[, measured over the prior six-month period by physical delivery of the underlying security or by delivery in cash] may be cash-settled as follows:

(a) The Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in this subparagraph (ii) by using trading statistics for the previous six-month period. Outside of this bi-annual review, the Exchange may determine any newly FLEX-eligible ETFs that satisfy the notional value and trading volume requirements in this subparagraph (ii) by using trading statistics for the previous one-month period. Any ETF that satisfies such requirements shall be eligible for cash settlement as a contract term.[ The Exchange will

permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in this subparagraph (ii). If more than 50 ETFs satisfy the notional value and trading volume requirements, the Exchange will select the top 50 ETFs that have the highest average daily trading volume.]

(b) If the Exchange determines pursuant to the bi-annual review conducted under subparagraph (ii)(a) above that an underlying ETF ceases to satisfy the criteria in this subparagraph (ii), the following shall apply:

(1) If no open interest exists in cash-settled FLEX Equity Options overlying such ETF during the previous six-month period, any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery, and any open cash-settled FLEX ETF Option positions may be traded only to close the position.

(2) If open interest in cash-settled FLEX Equity Options overlying such ETF exists during the previous six-month period, the Exchange will permit the opening of new cash-settled FLEX Equity Option positions overlying such ETF for a period of one year from the date of such bi-annual review. Thereafter, any new position overlying such ETF will be required to have exercise by physical delivery, and any remaining open cash-settled FLEX ETF Option positions may be traded only to close the position.

(3) Notwithstanding subparagraph (b)(2), if the underlying ETF satisfies the criteria in this subparagraph (ii) at the time of the bi-annual reviews during the one-year period, such period will terminate and the underlying ETF will resume full eligibility for cash settlement as a contract term pursuant to this subparagraph (ii).

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