

COMMITTEE ON CAPITAL MARKETS REGULATION

October 13, 2026

Secretary, Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

VIA ELECTRONIC PORTAL

Re: File No. SR-CBOE-2026-061: Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators Reported by Certain Issuers of Stock

Dear Sir or Madam:

The Committee on Capital Markets Regulation (“Committee”) appreciates the opportunity to comment on the proposal filed by Cboe Exchange, Inc. with the Securities and Exchange Commission (“SEC”) to list binary options on key performance indicators of public companies (“binary KPI options”).¹

Founded in 2006, the Committee is dedicated to enhancing the competitiveness of U.S. capital markets and ensuring the stability of the U.S. financial system. Our membership includes forty-six leaders drawn from the finance, investment, business, law, accounting, and academic communities. The Committee is chaired jointly by R. Glenn Hubbard (Emeritus Dean, Columbia Business School) and John L. Thornton (Former Chairman, The Brookings Institution) and is led by Hal S. Scott (Emeritus Nomura Professor of International Financial Systems at Harvard Law School and President of the Program on International Financial Systems). The Committee is an independent and nonpartisan 501(c)(3) research organization, financed by contributions from individuals, foundations, and corporations.

Binary KPI options are cash-settled options contracts whose payout depends on whether a specified financial or operating metric reported by a public company, such as quarterly earnings, revenue, operating margin, or production volumes (i.e., the KPI), satisfies a specified threshold. If the KPI meets the threshold, the holder receives a fixed cash payment, typically \$1 per contract.² If the KPI does not meet the threshold, the holder receives nothing. Whether the KPI meets the threshold is determined by the company’s earnings-related disclosures filed with the SEC on Form 8-K, 10-Q, or 10-K.³ Thus, whereas traditional equity options allow investors to take a position on

¹ SECURITIES AND EXCHANGE COMMISSION, *Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators Reported by Certain Issuers of Stock*, 91 FED. REG. 43,418 (proposed Jul. 15, 2026), <https://www.federalregister.gov/documents/2026/07/15/2026-14201/self-regulatory-organizations-cboe-exchange-inc-notice-of-filing-of-a-proposed-rule-change-to-amend> [the “Proposal”].

² *Id.* at 43,433.

³ *Id.* at 43,432.

a company's stock price, binary KPI options allow investors to take a position on a specific aspect of a company's performance.

Binary KPI options are a type of event contract. The event contract market has grown significantly, rising from approximately \$1 billion in monthly trading volume in 2024 to over \$50 billion as of July 2026.⁴ Event contract trading in the United States currently occurs on CFTC-regulated trading venues, which offer contracts on sporting, political, and weather events, as well as some public company KPIs that relate to operational metrics and corporate events, such as customer volumes and the timing of product launches.⁵

However, binary KPI options based on public companies' core financial metrics, such as income, revenue, and earnings per share, are not currently available on these platforms. These KPIs are closely linked with the financial performance of the equity of a public company, and the language of the Exchange Act and Commodity Exchange Act strongly supports the view that they are classified as securities within the SEC's jurisdiction.⁶ However, the SEC has thus far not approved binary KPI options for exchange trading. As a result, binary KPI options on public companies' core financial metrics are currently available only in over-the-counter markets and offshore markets.⁷

In June 2026, Cboe filed the Proposal to list binary KPI options on its SEC-registered options exchange. The Proposal designates 116 distinct KPIs across twenty-three public companies including core financial metrics, such as earnings per share and total revenue.⁸ This would constitute the first listing of binary KPI options on an SEC-regulated options exchange.

Our letter proceeds in two parts. Part I explains why the exchange trading of binary KPI options benefits U.S. investors and capital markets. Part II explains why establishing SEC oversight of trading of binary KPI options is important to realizing these benefits. We conclude by recommending that the SEC approve the Proposal and confirm the SEC's jurisdiction over binary KPI options that relate to core financial metrics such as income, revenue, and earnings per share.

⁴ Kaitlyn Radde, *Prediction markets' trading volume doubled between May and July, largely driven by sports*, PEW RESEARCH CENTER (Sept. 23, 2026), <https://www.pewresearch.org/short-reads/2026/09/23/prediction-markets-trading-volume-doubled-between-may-and-july-largely-driven-by-sports/>.

⁵ COMMODITY FUTURES TRADING COMMISSION, *Designated Contract Markets*, <https://www.cftc.gov/IndustryOversight/IndustryFilings/TradingOrganizations?Status=Designated> (last visited Oct. 13, 2026); see, e.g., POLYMARKET, *Economics Category*, <https://polymarket.us/category/economics> (last visited Oct. 13, 2026).

⁶ Proposal at 43,428-29.

⁷ *Id.* at 43,437.

⁸ See SECURITIES AND EXCHANGE COMMISSION, Exhibit 5 of the Proposal, https://cdn.cboe.com/resources/regulation/rule_filings/pending/2026/SR-CBOE-2026-061-Amendment-No-1.pdf#page=199 (proposed Rules of Cboe Exchange, Inc., Chapter 4, Section I, Rule 4.80 (Definitions) and Rule 4.81 (Designation of Binary KPI Option Contracts)).

I. The Benefits of Binary KPI Options for U.S. Investors and Capital Markets

The exchange trading of binary KPI options presents significant benefits for U.S. investors and capital markets.

i. Facilitating portfolio design and hedging

Binary KPI options allow investors to obtain direct exposure to or hedge against specific aspects of a company's performance. For example, an investor who holds a company's stock may expect strong long-term performance but be concerned about a near-term earnings shortfall. A binary KPI option that pays if earnings fall below a specified threshold could partially offset losses associated with that shortfall while allowing the investor to retain the stock. Standard equity options only provide indirect exposure to such performance metrics because their payouts depend on the overall stock price, which reflects many factors beyond the metric of concern.⁹

While binary KPI options can be negotiated in over-the-counter markets, listing them on options exchanges will facilitate more efficient access by providing standardized contracts that investors can trade without negotiating a bilateral agreement.¹⁰ Exchange listing of binary KPI options will thus allow investors to reduce their trading costs and portfolio risk.¹¹ Furthermore, by allowing investors to manage individual risks while retaining their equity positions, binary KPI options will increase investors' ability to maintain long-term capital commitments to public companies, thus facilitating capital formation.¹²

ii. Improving price discovery

Binary KPI option prices convey market expectations about specific measures of a company's performance. Empirical evidence shows that the information provided by such prices increases the accuracy of the pricing of the underlying company's securities.

For example, Roll et al. (2009) found that higher options volumes increase the market's ability to accurately price a company's securities.¹³ Cao et al. (2024) found that options trading increases the information reflected in underlying stock prices and encourages information acquisition by both options and stock investors.¹⁴ Gómez-Cram et al. (2026) found that these benefits also occur

⁹ Proposal at 43,437.

¹⁰ See, e.g., SECURITIES AND EXCHANGE COMMISSION, Release No. 34-60978: *Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change to Amend the \$1 Strike Program to Allow Low-Strike LEAPS* (Nov. 10, 2009), <https://www.sec.gov/files/rules/sro/cboe/2009/34-60978.pdf> (Options listed on an exchange benefit from “a centralized forum for price discovery, pre- and post-trade transparency, standardized contract specifications, and the guarantee of the Options Clearing Corporation.”).

¹¹ See, e.g., COMMITTEE OF EUROPEAN SECURITIES REGULATORS, *Consultation Paper: Standardisation and Exchange Trading of OTC Derivatives* at 17 (Jul. 19, 2010), https://www.esma.europa.eu/sites/default/files/library/2015/11/10_610.pdf.

¹² Proposal at 43,437.

¹³ Richard Roll, Eduardo Schwartz, and Avanidhar Subrahmanyam, *Options Trading Activity and Firm Valuation*, 94(3) JOURNAL OF FINANCIAL ECONOMICS 345 (2009).

¹⁴ Jie Cao et al., *Options Trading and Stock Price Informativeness*, 59(4) JOURNAL OF FINANCIAL AND QUANTITATIVE ANALYSIS 1,516 (2024).

in the case of binary KPI options, finding that the pricing of binary KPI options increases the market's ability to accurately predict a company's future earnings and thus contributes to more accurate pricing of the company's stock.¹⁵ Their analysis moreover suggests that the magnitude of these benefits will increase as the binary KPI options market matures and becomes more liquid.

II. The Benefits of SEC Oversight of Binary KPI Options Trading

The jurisdictional framework established under the Exchange Act and Commodity Exchange Act strongly supports the view that binary KPI options contracts on core financial metrics of public companies are classified as securities within the SEC's jurisdiction. However, because these contracts do not yet trade on SEC-regulated options exchanges, market participants lack express confirmation of the SEC's jurisdiction and the applicable regulatory framework. Confirming SEC jurisdiction over these binary KPI options through approval of the Proposal would help realize the capital market benefits of such options while protecting investors and market integrity.

In particular, the SEC's regulatory framework provides protections governing broker best execution, customer order handling, front-running, market access, and trading transparency.¹⁶ Standardized exchange trading and central clearing would also make it easier to enter and close positions, improve price transparency, and reduce bilateral counterparty risk.¹⁷

Moreover, the SEC has decades of experience regulating, surveilling, and enforcing the rules governing the trading of traditional stock options and the trading of the stocks to which binary KPI options relate.¹⁸ Regulating binary KPI options within the same framework would support coordinated surveillance, investigations, and enforcement. As the Proposal notes, binary KPI options that trade on SEC-regulated options exchanges would be incorporated into existing options surveillance programs, including FINRA's insider-trading surveillance and Consolidated Audit Trail reporting.¹⁹

Clarity on the applicable regulatory framework also encourages investor participation and product development and reduces legal and compliance costs.²⁰ In particular, clarifying that binary KPI options tied to core financial metrics fall within the SEC's regulatory framework would encourage

¹⁵ Roberto Gómez-Cram et al., *Financial Prediction Markets: A New Measure of Earnings Expectations*, SSRN Paper (Aug. 30, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5933475.

¹⁶ FINRA Rule 5310, 17 C.F.R. § 242.606, FINRA Rule 5270, 17 C.F.R. § 240.15c3-5, 17 C.F.R. § 242.602, 17 C.F.R. § 242.613.

¹⁷ See SECURITIES AND EXCHANGE COMMISSION, *supra* note 10.

¹⁸ See, e.g., SECURITIES AND EXCHANGE COMMISSION, *Administrative Proceeding File No. 3-10282 with Respondents: AMEX, CBOE, PCX, and PHLX* (Sept. 11, 2000), <https://www.sec.gov/enforcement-litigation/administrative-proceedings/34-43268>.

¹⁹ Proposal at 43,427.

²⁰ See SECURITIES AND EXCHANGE COMMISSION, *Strategic Plan 2026-2030* at 7, https://www.sec.gov/files/sec_strategic_plan_fy26-fy30.pdf (“Regulatory clarity and certainty are essential to fostering competition, reducing compliance costs, and enabling market participants to operate with confidence.”).

exchanges, brokers, and market makers to develop products and services with greater confidence about their obligations and give investors greater certainty about the protections that apply.

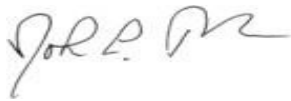
Conclusion

The Committee recommends that the SEC approve the Proposal and confirm the SEC's jurisdiction over binary KPI options tied to core financial metrics, including income, revenue, and earnings per share. These actions would expand access to tools for investment and hedging, improve price discovery, and support capital formation within an established framework that protects investors and market integrity.

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Thank you for your consideration of the Committee's position. Should you have any questions or concerns, please do not hesitate to contact the Committee's President, Professor Hal S. Scott (hscott@capmksreg.org) or its Executive Director, John Gulliver (jgulliver@capmksreg.org) at your convenience.

Respectfully submitted,



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