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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of a Proposed Rule Change To Permit the Listing of Binary KPI Options

September 15, 2026.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on September 3, 2026, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II 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

The Exchange proposes to amend its Rules to permit the listing of binary options overlying key performance indicators (''KPIs'') reported by certain issuers of stock (''binary KPI options''). The proposed rule change is available on the Exchange's website at *www.nyse.com* 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to amend its Rules to permit the listing of binary options overlying KPIs reported by certain issuers of stock (''binary KPI options'').[4]

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

Under current Exchange Rules, the Exchange may list binary return derivatives (''ByRDS'') and binary options on broad-based indexes.[5] The Exchange proposes to amend its Rules to permit the listing of binary KPI options. Binary KPI options are European-style, cash-settled options contracts listed on an underlying KPI of an issuer whose exercise settlement value is determined not by the market price of the issuer's stock, but by whether a specific financial or operating metric reported by the issuer in an earnings-related filing submitted to the U.S. Securities and Exchange Commission (the ''Commission'') meets or exceeds a pre-specified strike level.

First, similar to ByRDS and Broad-Based Index Binary Options, the Exchange proposes to adopt Section 20 (Binary KPI Options) to describe binary KPI options. The Rules in proposed Section 20 apply only to binary KPI options. All other Rules apply to the trading of binary KPI options, except as otherwise provided or the context otherwise requires.

Specifically, the Exchange proposes to adopt 900KPI (Applicability, Definitions). Like other standardized options, binary KPI options have standardized terms that are established by the Exchange. Standardized terms for binary KPI options include the exercise criteria that is the condition or criteria of a binary KPI option, the exercise settlement amount (*i.e.,* payout amount), strike prices, expiration dates, settlement type as A.M.-settlement or P.M.-settlement, the settlement style (as European), and the requirements used to determine if the KPI condition or criteria of a binary KPI option has been met (the ''payout determination requirement''). The Exchange proposes to establish these terms in new Rule 900KPI and additional provisions in proposed Rule 900KPI(b), as described below.

The Exchange proposes to define a ''binary KPI option'' in new Rule 900KPI(b) as a cash-settled option contract listed on an underlying KPI of an issuer with an exercise settlement amount that is established at the creation of the option and with a settlement value that is determined by whether a specific KPI disclosed by the issuer in an earnings-related filing submitted to the Commission meets or exceeds its exercise price. Binary KPI options are paid out if the reported value of the applicable KPI (1) equals or is greater than (as the payout determination requirement) the exercise price for a call binary KPI option or (2) is less than (as the payout determination requirement) the exercise price for a put binary KPI option. The Exchange also proposes to provide that unless the context dictates otherwise, the terms underlying security, equity, or index, or any variations of these terms, in the Rules mean KPI for purposes of binary KPI options.

The Exchange proposes to define a ''call binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is at or above the exercise price at expiration (*i.e.,* in- or at-the-money).[6]

The term ''Clearing Corporation'' would mean the registered clearing agency designated by the Exchange to clear binary KPI options.[7]

The Exchange proposes to define ''exercise price'' (also referred to as ''strike price'') as the value [8] to which the settlement value of the underlying KPI is compared to the exercise settlement amount. For binary KPI options, the exercise price is the exercise threshold of an option contract that establishes a number, value, or

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

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange's proposal is similar to recent proposals filed by Cboe Exchange, Inc. (''Cboe'') and MEMX LLC (''MEMX''). *See* Securities Exchange Act Release No. 105877 (July 10, 2026), 91 FR 43418 (July 15, 2026) (SR–CBOE–2026–061) (''Notice of Filing of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators (''KPIs'') Reported by Certain Issuers of Stock (''Binary KPI Options'')) and Securities Exchange Act Release No. 106182 (August 24, 2026) (SR–MEMX–2026–25).

[5] *See* NYSE American Rules Section 17 (Binary Return Derivatives sm) and Section 18 (Broad-Based Index Binary Options sm).

[6] *See* proposed Rule 900KPI(b)(2).

[7] *See* proposed Rule 900KPI(b)(3). The definition of Clearing Corporation reflects that the Exchange may designate the Options Clearing Corporation (''OCC'') or another registered clearing agency to clear binary KPI options. References in this filing to the Clearing Corporation therefore are intended to be clearing agency-neutral. The proposed definition does not alter the requirement that clearing and settlement occur through a registered clearing agency subject to the applicable provisions of the Act and the rules and oversight applicable to that clearing agency.

[8] *See* proposed Rule 900KPI(b)(4). The value of an exercise price is measured in the applicable units of the KPI. For example, some KPIs are measured in U.S. dollars while others may be measured in percentages or numbers.

measure that is compared against the price of the settlement value of the underlying index or the KPI to determine if the cash payout amount (*i.e.,* the exercise settlement amount) will be paid out. In other words, binary options will have a threshold number as the exercise price that will be used to determine if the exercise criteria of the binary option has been met and the option will be exercised (and if holders will receive the cash payout amount). For binary KPI options, the exercise threshold will be a number that reflects or is compared to the underlying KPI of the binary option.

The Exchange proposes to define the term KPI (or ''key performance indicator'') as a key financial or operating metric disclosed by an issuer in its earnings-related filings submitted to the Commission (*i.e.,* Form 8–K, Form 10–Q, or Form 10–K, as applicable).[9]

The Exchange proposes to define ''put binary KPI option'' as an option contract that returns an exercise settlement amount if the settlement value of the underlying KPI is below the exercise price at expiration (*i.e.,* in-the-money).[10]

The Exchange proposes to define ''settlement value'' as the value of the underlying KPI that is used to determine whether a binary KPI option is in-, at-, or out-of-the-money.[11] The proposed definition specifies that the ''settlement value'' is the value of the applicable KPI as disclosed in the applicable issuer's earnings-related filing submitted to, the Commission on applicable expiration date (for both A.M.-settled and P.M.-settled binary KPI options). The Exchange designates the applicable KPI and the relevant reporting period (for example, a calendar quarter) at the time of listing a binary KPI option. Proposed paragraph (b) of the settlement value definition provides if the applicable KPI is not reported or otherwise unavailable on the expiration date (and will not be reported), settlement (including any payout of the exercise settlement amount) will occur in accordance with the Rules of the Clearing Corporation.

Additionally, proposed paragraph (c) of the settlement value definition states if an applicable KPI is restated after the expiration date and settlement of a binary KPI option, the settlement value (and the exercise settlement amount) of the binary KPI option does not change. In other words, the value of the applicable KPI as reported by the issuer on the applicable expiration date is final, and the amount paid (or not paid) at settlement will not change, regardless of whether it is later restated by the issuer.

The Exchange proposes to adopt Rule 901KPI(a) (Designation of Binary KPI Option Contracts) to identify the binary KPI options that may be listed for trading on the Exchange. Pursuant to proposed Rule 901KPI(a), the Exchange may from time to time approve for listing and trading on the Exchange any of the following binary KPI options contracts for the following issuers:

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Apple, Inc	Earnings per share: diluted. Total net sales. Net sales by category: iPhone. Net sales by category: Services. Net sales by reportable segment: Americas. Net sales by reportable segment: Greater China
Advanced Micro Devices, Inc	GAAP Diluted earnings per share. GAAP Revenue. Net Revenue: Data Center Segment. Net Revenue: Client and Gaming Segment. GAAP Operating Margin (%)
Alphabet Inc	Diluted net income per share. Revenues. YouTube ads Revenues. Google Cloud Revenues
Amazon.com, Inc	Diluted earnings per share. Total Net sales. AWS: Net sales. North America: Net sales. International: Net sales. Net Sales: Advertising services.
Bank of America Corporation	Diluted earnings per share. Total Revenue, net of interest expense. Net Interest Income. Provision for credit losses. Net Income.
Citigroup Inc	Diluted earnings per share. Total Revenue, net of interest expense. Net Interest Income. Total Provision for credit losses. Net Income.
Coinbase Global, Inc	Net income per share—Diluted. Total Revenue. Transaction Revenue. Total Trading Volume. Subscription and Services Revenue.

[9] *See* proposed Rule 900KPI(b)(6).

[10] *See* proposed Rule 900KPI(b)(7).

[11] *See* proposed Rule 900KPI(b)(8).

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Ford Motor Company	GAAP Earnings per share—Diluted. Total Revenues. Ford Pro Segment: Revenue. Ford Model e Segment: Revenue. Ford Blue Segment: Revenue.
Intel Corporation	GAAP Earnings per share attributable to Intel—diluted. Net revenue. Revenue: Client Computing Group (CCG). Revenue: Data Center and AI (DCAI). Revenue: Intel Foundry. GAAP operating margin (%).
JPMorgan Chase & Co	Earnings per share—diluted. Net revenue—reported. Net Interest Income. Provision for credit losses. Net Income.
Marathon Digital Holdings, Inc	Earnings (Net loss) per share of common stock—diluted. Revenues. Number of Blocks Won (# Bitcoin (BTC)). Energized Hashrate (EH) (# EH/s). Total Bitcoin Holdings (# BTC). BTC Produced (# BTC). BTC Purchased (# BTC).
Meta Platforms, Inc	Earnings per share: Diluted. Revenue. Family Daily Active People (DAP) (#). Revenue: Advertising. Operating Margin (%).
Microsoft Corporation	Diluted Earnings per Share. Revenue. Intelligent Cloud: Revenue. Microsoft Cloud revenue. More Personal Computing: Revenue.
Netflix, Inc	Earnings per share: Diluted. Revenues. United States and Canada (UCAN): Revenue. Europe, Middle East, and Africa (EMEA): Revenue Operating Margin (%).
NVIDIA Corporation	GAAP Diluted earnings per share. Revenue. Data Center Revenue. Edge Computing Revenue. Automotive Revenue.
Palantir Technologies Inc	Earnings per share attributable to common stockholders, diluted. Revenue. Net Income. Closed Deals of at Least $1 Million (#).
Robinhood Markets, Inc	Net income attributable to Robinhood common stockholders: Diluted. Total net revenues. Funded Customers (#). Average Revenue Per User (“ARPU”). Robinhood Gold Subscribers (#).
SoFi Technologies, Inc	Earnings per share attributable to common stockholders–diluted. Total net revenue. Total net revenue—Technology Platform. Total net revenue—Financial Services. Total net revenue—Lending.
Space Exploration Technologies Corp	Earnings per share: Diluted. Total Revenues.
Super Micro Computer, Inc	Net income per common share: Diluted. Net sales. Gross Margin (%). Cash flow used in operations. Net Income.
Target Corporation	Diluted earnings per share. Net sales. Food & Beverage Net sales. Apparel & Accessories Net sales. Operating income: Rate (%).

Company	KPI (each financial metric is measured in $ unless otherwise specified)
Tesla, Inc	Net Income per share of common stocks attributable to common stockholders: diluted.
	Total Revenues.
	Total Automotive Revenue.
	Model 3/Y Production (#).
	Supercharger Connectors (#).
	Free Cash Flow.
The Walt Disney Company	Diluted earnings per share.
	Revenues.
	Entertainment Subscription Video On Demand (SVOD) Operating Income.
	Revenues: Experiences.
	Segment operating income: Sports.

The Exchange proposes to add Rule 901KPI(b) to clarify that binary KPI options are a separate class from other options overlying the stock of the issuer and are a separate class from other binary KPI options with differently underlying KPIs for the same issuer. The Exchange believes this is reasonable given that an individual KPI is the specific underlying of binary KPI options, and generally options with different underlyings (*e.g.,* different underlying security or index) are different option classes.

Next, the Exchange proposes to adopt Rule 902KPI (Terms of Binary KPI Option Contracts) to describe the permissible terms of binary KPI option series. Proposed Rule 902KPI provides that binary KPI options listed and traded on the Exchange are designated as to expiration date, exercise price, settlement type, settlement style, exercise settlement amount, contract multiplier, and underlying KPI. After approving a particular binary KPI option class for listing and trading on the Exchange, the Exchange from time to time may open for trading series of options in that binary KPI option class.

Proposed Rule 902KPI(a) states binary KPI options have European-style settlement, which is consistent with the rules regarding binary index options, as noted above. Proposed Rule 902KPI(a) further provides that the Exchange may designate the settlement type for binary KPI options as A.M.-settled or P.M.-settled. Binary KPI options for issuers [12] that disclose their earnings results before the open of the Core Trading Session on a given trading day are designated as A.M.-settled binary KPI options, and binary KPI options for issuers that disclose their earnings results after the close of the Core Trading Session on a given trading day are designated as P.M.-settled binary KPI options. The Exchange notes that the proposed concepts of A.M.-settlement and P.M.-settlement for binary KPI options differ compared to traditional options, for which ''P.M.-settled'' generally means that the expiration of an option so designated will settle to the closing price of the underlying security or index value and ''A.M.-settled'' generally means that the expiration of an option so designated will settle to the opening price of the underlying. While different than how these terms apply to standard and binary index options, the Exchange believes the proposed description of A.M.-settlement and P.M.-settlement appropriately reflect the earnings disclosure practices of issuers. Additionally, while the timing of the event that will determine whether the Exchange designates a binary KPI option as A.M.-settled or P.M.-settled is different than that for traditional options and binary index options, the trading hours on expiration dates for each of A.M.-settled and P.M.-settled binary KPI options are consistent with those of A.M.- settled and P.M.-settled index options (traditional and binary) today.

Proposed Rule 902KPI(b) describes permissible expirations for binary KPI options. Specifically, the proposed rule change will permit the Exchange to list series that expire on the date the issuer announces its earnings results for the applicable reporting period (such as calendar quarter). The expiration date for a binary KPI option will be the date on which an issuer discloses the applicable KPI in its earnings results (for example, the date on which it issues an earnings results press release) for the specified reporting period (with the specific expiration date to be finalized when an issuer announces the date on which it will disclose its earnings results for that reporting period).[13] If that date is a Tuesday, Wednesday, Thursday, or Friday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately prior to that day. If that date is a Monday and the Exchange is not open for business on that date, the expiration date will be the first business day immediately following that Monday. The disclosed KPIs relate to a specific reporting period (such as a calendar quarter), which KPIs an issuer publicly announces on a date following the end of that reporting period.

While an expiration date for a binary KPI option will be a specific date, as is the case for traditional options and binary index options, the Exchange's proposed designation of expiration dates for binary KPI options will differ to reflect standard issuer disclosure practices. In some instances, an issuer might not establish the specific date on which it will announce its earnings results for a reporting period until weeks prior to the release date. Consequently, unlike standard equity and index options that have an exact expiration date when strikes are first listed, a binary KPI option will be listed for trading with a placeholder expiration date if the date the KPI information will be released by the issuer is not publicly known. If a placeholder expiration date is required, it will be set as the first trading day that is three months following the date of the prior quarterly release date for a KPI (for KPIs announced quarterly) and six months following the date of the prior semiannual release date for a KPI (for KPIs announced semiannually, if the Commission approves proposed rules that would permit such reporting). Once

[12] The Exchange determines whether an issuer discloses its earnings results before or after the close of the Core Trading Session on a given trading day based on publicly available information regarding the issuer's disclosure practice.

[13] For example, for a binary KPI option series, the Exchange may designate the reporting period for a series to be the fourth quarter of 2026. The expiration date for that series would be the date on which the applicable issuer establishes as the date it will announce earnings results for that quarter. The Exchange will issue a Trader Update when the specific expiration date for a binary KPI option is finalized. Additionally, the Exchange will maintain a reference data file for each issuer KPI on which the Exchange lists binary KPI options (as will be described in the Exchange's technical specifications available on its public website), and that reference data file will be updated with the specific expiration date for a binary KPI option once known.

the KPI issuer announces the release date of the KPI information, the expiration date will be updated as the finalized expiration date of the option contract. Ultimately, however, the expiration date for a binary KPI option is an issuer's earnings release date at the time the series is listed (even if the exact date is unknown) until expiration.

The Exchange may designate binary KPI option series to expire up to 12 months from the time they are listed and may list up to two expirations at one time for a binary KPI option (per KPI per issuer). The Exchange may open for trading a series of binary KPI options at least one business week prior to the expiration date of a binary KPI option. The proposed permissible expirations for binary KPI options are similar to current Rules. First, the proposed rule change permits the Exchange to list binary KPI options to expire up to 12 months from the time they are listed. Current rules regarding binary index options permit these expirations, in addition to expirations out more than 12 months up to 36 months from the time they are listed.[14] The proposed rule change also limits the Exchange to list up to two expirations at one time for binary KPI options. Therefore, the proposed scope of permissible expirations for binary KPI options is narrower than that permitted for binary index options under current Rules (as previously approved by the Commission).

The proposal to list expirations at least one business week prior to the expiration date of binary KPI option (as well as the proposed language regarding shifting an expiration date to the immediately business day before or after an expiration date that falls on a day the Exchange is not open for business) is substantially similar to current Exchange rules applicable to binary equity options,[15] as well as the rules of another options exchange applicable to short term equity options series.[16] The Exchange believes it is appropriate to permit listing of binary KPI options that expire up to 12 months from the time they are listed to accommodate different issuer reporting periods (including semiannual reporting if the Commission approves recently proposed rules to permit such reporting), as well as to permit the Exchange to list expirations for consecutive calendar quarter periods or for a calendar quarter and annual reporting period at the same time. As discussed above, issuers disclose KPIs in their periodic reports submitted to the Commission.

Proposed Rule 902KPI(c) describes the automatic exercise feature of binary KPI options. Specifically, the proposed rule states that binary KPI options will be automatically exercised at expiration if the settlement value of the underlying KPI is equal to or greater than the exercise price of a call binary KPI option or less than the exercise price in the case of a put binary KPI option.

Proposed Rule 902KPI(d) describes the permissible exercise prices (or strike prices) the Exchange may designate for series of binary KPI options. Proposed Rule 902KPI(d)(1) describes how the value of exercise prices of binary KPI options are measured. Specifically, the exercise price of each binary KPI option series will be fixed at an amount equal to a value of the underlying KPI. Because the value of certain KPIs may be very large (*e.g.,* billions of dollars), the Exchange proposes that the exercise price value of the underlying KPI will be divided by a scaling factor based on the value of the KPI in the issuer's most recent earnings-related disclosure as of the time a binary KPI option class is listed) as follows:

- if the most recently disclosed KPI value is greater than or equal to one trillion, the exercise price equals that value divided by one trillion (*e.g.,* for such KPIs, an exercise price of 27.00 is equivalent to a KPI value of 27,000,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one billion but less than one trillion, the exercise price equals that value divided by one billion (*e.g.,* for such KPIs, an exercise price of 112.00 is equivalent to a KPI value of 112,000,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one million but less than one billion, the exercise price equals that value divided by one million (*e.g.,* for such KPIs, an exercise price of 900.00 is equivalent to a KPI value of 900,000,000.00);
- if the most recently disclosed KPI value is greater than or equal to one thousand but less than one million, the exercise price equals that value divided by one thousand (*e.g.,* for such KPIs, an exercise price of 42.00 is equivalent to a KPI value of 42,000.00); and
- if the most recently disclosed KPI value is less than one thousand, the exercise price equals that value and is not divided by a scaling factor (*e.g.,* for such KPIs, an exercise price of 774.00 is equivalent to a KPI value of 774.00).[17]

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

The Exchange will announce via Trader Update if the scaling factor applied to a binary KPI options changes (for example, the KPIs will be scaled in billions rather than in millions). Additionally, the Exchange will update this information in the Exchange's technical specifications regarding binary KPI options and reference data file that describes the terms of binary KPI options, both of which will be available on the Exchange's website (customers receive notifications of such updates). This is consistent with how the Exchange provides information regarding product information (including updates) for all options the Exchange lists for trading.

It is possible for a KPI to have a negative value, such as earnings per share (which is equivalent to a loss per share). Proposed Rule 902KPI(d)(1)(B) provides the Exchange may list binary KPI options series with exercise prices representing negative KPI values. For these series, the exercise price will

[14] *See* Rule 901BIN(c).

[15] *See* Rule 903ByRDS(b).

[16] *See* Cboe Rule 4.5(d).

[17] When applying the scaling factor, the Exchange will not round the scaled KPI value and instead will truncate the value so the scaled strike price value fits within standard strike listing format.

equal the absolute value of the KPI and will be scaled as described above. For example, if an issuer's earnings per share in the last reporting period was −$3.52 (and thus was a loss per share), a binary KPI option for such issuer with a strike of 3.58 will reflect an expected loss of $3.58 per share. The Exchange will incorporate into symbology for binary KPI options whether the value of the strike price is positive or negative, including if the Exchange lists binary KPI option series with both positive and negative strike prices. Whether a symbol reflects a positive or negative value will be available on contract specifications as well as the reference data file for the specific binary KPI option on the Exchange's public website.

Proposed Rule 902KPI(d)(2) provides the minimum interval between strike prices for binary KPI options series is:

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

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

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

Proposed Rule 902KPI(e) addresses bid and offer conventions for binary options with multipliers other than 100. It will provide clarity and consistency in market quotations relative to the notional size of the option, promotes investor understanding of the cost and value of binary KPI option contracts. Therefore, the Exchange believes the proposed rule change is consistent with just and equitable principles of trade because it creates a pricing structure that reflects the notional value of an option based on its multiplier.

Proposed Rule 902KPI(f) describes the initial series of a binary KPI option the Exchange may open for trading. Specifically, the Exchange may open for trading one or more binary KPI option series with a fixed KPI value as the strike price, with approximately the same number of strike prices being opened above and below the at-the-money KPI value (*i.e.,* the value of the KPI in the issuer's most recent earnings-related disclosure) at the time the binary KPI options are opened. The Exchange will list strike prices for binary KPI option series that are reasonably close to the at-the-money KPI value at the time of listing. A strike is "reasonably close" to the at-the-money KPI value if (1) for KPIs less than or equal to 10, it is no more than 100% above or below the at-the-money KPI value; and (2) for KPIs greater than 10, it is no more than 30% above or below the at-the-money KPI value. The Exchange may also open binary KPI option series that are more than 30% above or below the at-the-money KPI value (if the KPI is greater than 10) provided demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers.

The Exchange may add new series of binary KPI options series when the Exchange deems it necessary to maintain a fair and orderly market or to meet customer demand. To the extent the Exchange lists binary KPI options series for an expiration before then-currently listed binary KPI options expire (and thus before the applicable issuer has disclosed the KPI value for the reporting period immediately preceding the reporting period for these newly listed options), the Exchange may list additional series after the KPI value for the immediately preceding reporting period is disclosed using that disclosed KPI value as the at-the-money KPI. For example, before expiration of a binary KPI options series set to expire on the date of an issuer's disclosure of its third quarter earnings results, the Exchange lists series of that binary KPI option to expire on the date of an issuer's disclosure of its fourth quarter earnings results (using the KPI from the second quarter earnings results as the at-the-money KPI value). After the issuer discloses its third quarter earnings results, including the applicable KPI, the Exchange may list additional series for the fourth quarter binary KPI options using the third quarter KPI result as the at-the-money KPI value. Any additional strike prices the Exchange lists will be reasonably close (as defined above) to the at-the-money KPI value at the time of listing.

Continuing the above example, suppose the Exchange lists binary KPI options for the fourth quarter before the binary KPI options for the third quarter have expired. As proposed, the Exchange would list strikes above and below the at-the-money strike, which at the time of listing would be the settlement value KPI from the issuer's second quarter earnings results disclosure, as that is the most recently available KPI. If the KPI for the option was net sales, and the second quarter value was $45.093 billion, the at-the-money strike would be 45.10, and the Exchange could list strikes within 50% of that value, and additional series based on customer demand or market changes. After the Exchange lists those series, the issuer announces its third quarter earnings results, including net sales of $57.241 billion. As proposed, after that announcement, the Exchange may list additional strikes within 50% of $57.24 to reflect the change in value of the underlying (as well as additional series based on customer demand or market changes).

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

These proposed provisions regarding the listing of binary KPI option series are similar to provisions regarding permissible series of other options. The Exchange believes it is reasonable to list binary KPI options for a new reporting period prior to the expiration of then-listed binary KPI options for the immediately preceding reporting period (*e.g.,* listing binary KPI options for the fourth quarter before expiration of binary KPI options for the third quarter), and thus before the settlement value of the applicable KPI is known for the immediately preceding reporting period for these options, to permit investors to roll positions from one expiration to the next. As proposed, once the settlement value for the immediately preceding reporting period is known (the third quarter in this example), the Exchange may list additional series of the binary KPI options that reflect that KPI value. This is consistent with current practice if there is a change (including a substantial change) in the price of underlying security or value of an underlying index. For example, Rule 903(d) provides that the Exchange may open additional series of a short-term option series overlying a security when the market price of the underlying security moves substantially from the exercise price or prices of the series already opened, subject to the "reasonably close" parameters set forth in that rule. Disclosure of, as an example, the third quarter KPI value after the fourth quarter binary KPI options series were listed based on the second quarter KPI value (if the third quarter KPI value differs from the second quarter KPI value) is similar to the move in the price of an underlying security, which may result in the Exchange listing additional series based on the updated price of the underlying security. Similarly consistent with current practice for other options (as set forth in Rule 903, Commentary .10(c), for example), opening of binary KPI options based on this later-disclosed KPI value will not affect any other series of options of the same binary KPI options class previously opened.

Proposed Rule 902KPI(h) provides that the contract multiplier for each class of binary KPI options is one.

The Exchange proposes to add new Rule 903KPI (Determination of Settlement Value) to establish that binary KPI options that are "at-the-money," "in-the-money," or "out-of-the-money" are a function of the settlement value of the underlying KPI in relation to the type of binary KPI option (*i.e.,* put or call) and the exercise price. As described above, the settlement value for a binary KPI option is the value of the KPI as disclosed in the applicable issuer's earnings related filing. While the timing of an announcement of a KPI value factor into the determination of whether the Exchange lists a binary KPI option as A.M.-settled or P.M.- settled, the Exchange will source the settlement value from the filing the issuers submits to the Commission. Generally, companies issue press releases that contain earnings results and near contemporaneously submit a Form 8–K to the Commission with the press release as an exhibit. Therefore, it is unlikely the value of the KPI in the Commission filing will differ from the value in the initial announcement; however, the value in the Commission filing will be the ultimate settlement value.

Proposed Rule 904KPI (Adjustment) provides that binary KPI options are subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been determined, the Exchange will announce this adjustment via Trader Update, which will become effective as of the time specified in that announcement.

As described above, binary KPI options would be cleared by the Clearing Corporation, which would serve as the central counterparty to each transaction and facilitate standardized clearing, settlement, and contract administration processes pursuant to its Rules. Consistent with this centralized clearing framework, proposed Rule 904KPI provides that binary KPI options would be subject to adjustment only in accordance with and to the extent specified in the Rules of the Clearing Corporation. When any such adjustment has been determined, the Exchange will announce this adjustment via Trader Update, which will become effective at the time specified in that announcement. The Exchange believes that limiting contract adjustments to those provided under the Rules of the Clearing Corporation provides a clear and transparent framework under which any adjustments to binary KPI options would be administered. A registered clearing agency designated to clear binary KPI options would be subject to Commission oversight and would possess expertise in the clearance and settlement of financial products. Because binary KPI options represent a novel product type, the Exchange anticipates that the Clearing Corporation would develop adjustment procedures designed to address the unique characteristics of these contracts and the types of events that may require adjustment. To the extent the Clearing Corporation adopts new adjustment procedures for binary KPI options, those procedures would be subject to the applicable regulatory process, including review and approval by the Commission, as applicable, before the

Exchange commences trading in the product.

Next, the Exchange proposes to Rule 905KPI to provide that binary KPI options, may be traded on the Exchange from 9:30 a.m. to 4:00 p.m.[18] Further, the last day of trading for P.M.-settled binary KPI options is the day of expiration, and the last day of trading for A.M.-settled binary KPI options is the trading day prior to expiration.

The Exchange recognizes it is possible, although unusual and unlikely, that KPI information may become available at unexpected times. The proposed rules address the impact on trading and expiration that such disclosure may have. First, the proposed rule change provides if the Exchange confirms an issuer discloses the KPI prior to the expiration date, trading in the applicable binary KPI options series will cease, and the expiration date for the option accelerates to a date on or shortly after the date of that disclosure in accordance with the Rules of the OCC.[19] This may occur if, for example, the applicable issuer releases the KPI information in advance of the expiration date of the option. If the issuer releases KPI information after the expiration date, which may be the case if, for example, the issuer's earnings are delayed, trading in the option will not be impacted and will cease as of the expiration date. While the expiration date will not change, expiration processing of such options will be delayed until the KPI information becomes available, in accordance with the rules of the Clearing Corporation. Additionally, the proposed rule change provides if there is an unofficial disclosure of the KPI prior to the expiration date, the Exchange may determine to halt (and resume) trading in the applicable binary KPI options series in accordance with Rule 953NY. In certain circumstances, the expiration date for the option may accelerate in accordance with the Clearing Corporation rules; if this occurs, trading in the binary KPI will cease. This proposed provision addresses the unlikely event that KPI information becomes available through sources other than the issuer in advance of the expiration date. If the Exchange determines the KPI information reported from the unofficial source is unreliable, trading in the binary KPI option may resume until it expires.

The Exchange believes proposed Rule 905KPI(f), which provides that for binary KPI options, the System initiates the opening rotation at 9:30 a.m., is consistent with the opening auction framework already applicable to other index options listed on the Exchange and ensures that binary KPI options open for trading in an orderly and transparent manner.

The Exchange proposes to amend Rule 960NY to establish the minimum increment for bids and offers on orders for binary KPI options, which may not be less than $0.01.

The Exchange proposes to adopt Rule 906KPI (Position Limits for Binary KPI Options) to set forth position limit requirements for binary KPI options. The Exchange proposes to adopt Rule 906KPI(a) to provide that in determining compliance with Rule 904 (Position Limits), the position limit for binary KPI options is the same as the applicable position limit for the stock of the issuer per expiration and 100 binary KPI option contracts equal one standard option contract.

Per proposed rule 906KPI(b), positions in binary KPI options on the same KPI that have different expiration dates are not aggregated, and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated. In addition, the Exchange proposes to adopt Rule 906KPI(c) to provide that Binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Finally, per Rule 906KPI(d), with respect to binary KPI options, a binary KPI option short position coupled with a binary KPI option short call position, regardless of the KPI option strike, shall be exempt from the established position limits proscribed in Rule 904.

The Exchange also proposes to adopt Rule 907KPI (Reporting of Positions) Positions in binary KPI options shall be reported pursuant to Rule 904, except, in computing reportable binary KPI options thereunder, aggregation of positions shall be in accordance with Rule 906KPI. The proposed Rule 907KPI further provides that for purposes of this report, 100 binary KPI option contracts equal one standard option contract. The Exchange believes this is reasonable given that binary KPI options have a multiplier of 1 while standard equity option contracts have a multiplier of 100.

Except as otherwise described above, all binary KPI options will be listed and traded on the Exchange in a substantially similar manner as standard equity and index options and binary index options are permitted to be listed and traded under current Rules. The Rules that apply to the listing and trading of non-binary options on the Exchange, including those related to customer accounts, margin requirements and trading halt procedures,[20] which are designed to prevent fraudulent and manipulative acts and practices, will apply to the listing and trading of binary KPI options. The Exchange has analyzed its capacity and represents that it believes the Exchange has the necessary systems capacity to handle any potential additional message traffic associated with the listing of binary KPI options.

The Exchange will support electronic trading, floor trading, and complex orders. Trading in Flexible Execution (''FLEX'') options will not be offered. The Exchange may determine to support particular order types, order instructions, or times-in-force on a class-by-class basis. Consistent with current practice, if the Exchange modifies the applicability of any functionality or order instructions for binary KPI options, it will notify ATP Holders via Trader Update.

The Exchange will send quotation and transaction price information for binary KPI options to The Options Price Reporting Authority (''OPRA'') in the same manner it sends this information to OPRA for all other options the Exchange lists. Additionally, the Exchange understands from OPRA that it will disseminate information regarding binary KPI options in the same manner it does for all other options the Exchange lists. The Exchange intends to follow OPRA's standard capacity monitoring process for binary KPI options (in accordance with OPRA instructions), which includes submission of quarterly capacity projections (the Exchange will include its projected binary KPI option volume in the applicable submission). Further, the Exchange understands from OPRA that no technical changes are required to accommodate the reporting to OPRA of quotation and transaction information regarding binary KPI options (the Exchange represents, if later required by OPRA, it will adhere to any new technical requirements OPRA deems necessary to accommodate binary KPI options).[21]

[18] Unless otherwise specified, all times in this proposal are Eastern Time.

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

[20] Binary KPI options will not be tied to the trading state of the underlying issuer stock and thus, trading in binary KPI options will not be affected by halts in the underlying issuer stock. The binary KPI options will halt in accordance with Rule 953NY.

[21] The Exchange understands OPRA may need to update how it disseminates open interest information for binary KPI options, as its current

The Exchange does not believe American Trade Permit (''ATP'') Holders will experience any capacity issues as a result of this proposal and represents that it will monitor the trading volume associated with binary options and the effect (if any) of binary options on market fragmentation and the capacity of the Exchange's automated system.

The Exchange represents that the same surveillance procedures applicable to all other options currently listed and traded on the Exchange will apply to binary KPI options, and that it has the necessary systems capacity to support the option series. The Exchange's existing surveillance and reporting safeguards are designed to deter and detect possible manipulative behavior and other improper trading In addition, the Exchange has a Regulatory Services Agreement with the Financial Industry Regulatory Authority, Inc. (''FINRA''). Pursuant to a multi-party 17d–2 joint plan, all options exchanges allocate regulatory responsibilities to FINRA to conduct certain options-related market surveillances.[22] The Exchange is also a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement. ISG members work together to coordinate surveillance and investigative information sharing in the stock, options, and futures markets. Further, the Exchange will implement any new surveillance procedures it deems necessary to effectively monitor the trading of binary KPI options.

The Exchange will report any information regarding binary KPI options required to be reported to the Consolidated Audit Trail (''CAT'') in the same manner it reports this information to CAT for all other options the Exchange lists.[23] The Exchange represents, if later required by FINRA CAT, it will adhere to any new technical requirements FINRA CAT deems necessary to accommodate binary KPI options).

Pursuant to the Options Order Protection and Locked/Crossed Market Plan (''Linkage Plan''),[24] participant exchanges to the Linkage Plan established a framework to provide order protection. The Linkage Plan (and Exchange Rules 990NY through 993NY regarding intermarket linkage) applies during all trading sessions during which multiply listed options trade. Rule 993NY addresses order routing away from the Exchange to promote compliance with the Linkage Plan. If the proposed binary KPI options become multiply listed options, Users may designate an order for routing (or not available for routing), and the Exchange System is designed to, at all times, prevent trade-throughs and avoid displaying locked/crossed markets in accordance with the Linkage Plan (and Exchange Rules 990NY through 993NY regarding intermarket linkage).

Upon launch, binary KPI options will clear through the Clearing Corporation as that term is defined in proposed Rule 900KPI(b). In doing so, the proposal would bring these securities products within the established regulatory infrastructure applicable to listed options, including exchange trading and surveillance, standardized disclosure, and centralized clearance and settlement through a registered clearing agency, as further described below. Additionally, binary KPI options would be cleared through a registered clearing agency, which would serve as the central counterparty to each transaction and facilitate risk mitigation through established clearing, settlement, contract adjustment, and other standardized operational processes.

The Options Listings Procedure Plan (the ''OLPP'') sets forth procedures to facilitate the listing and trading of standardized options. This plan currently describes procedures with respect to options issued by and cleared at the OCC. If the Exchange ultimately does not designate the OCC as the Clearing Corporation for the purposes of the definition set forth in proposed Rule 900KPI(b), the Exchange will take steps necessary and within its authority to amend the OLPP to reflect listing procedures applicable to binary KPI options to the extent not cleared by the OCC.

The Exchange represents it will not list for trading binary KPI options until the registered clearing agency designated as the Clearing Corporation is authorized and operationally ready to clear the contracts and until all applicable filings and documents of the Clearing Corporation related to binary KPI options being cleared through the Clearing Corporation are approved by the Commission or effective after review by the Commission, as applicable.

As discussed in further detail below, the Exchange intends for binary KPI options to be treated as listed standardized options. Rule 9b–1 under the Act establishes a disclosure framework for standardized options pursuant to which investors receive a disclosure document describing the terms, characteristics, and risks of the product before trading. Depending on which registered clearing agency is designated as the Clearing Corporation, the applicable Rule 9b–1 disclosure document may be based on an existing options disclosure document utilized by that clearing agency, as modified or supplemented, as appropriate, or another comparable disclosure document prepared in connection with the clearance of binary KPI options. In either case, the disclosure document would contain substantially similar information regarding the terms, characteristics, risks, settlement mechanics, and other material features of binary KPI options and would be tailored, as necessary, to address the product's unique features and distinctions from traditional listed options. The Exchange believes that disclosure through the Rule 9b–1 framework would better serve the informational needs of investors than a traditional prospectus because binary KPI options are standardized options for which the principal investor considerations relate to the contract's terms, payout structure, settlement mechanics, and trading characteristics rather than the disclosure typically provided in connection with an offering of a corporate issuer's securities.

The Exchange will not commence listing and trading of binary KPI options until a registered clearing agency is authorized and operationally ready to clear the contracts; the applicable disclosure document under Rule 9b–1 is in place; any necessary changes relating

process incorporates information from OCC and references in this filing are clearing agency-neutral.

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

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

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

to CAT, FINRA, OPRA, the Linkage Plan, and OLPP have been completed; and the Exchange has issued an implementation notice to Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[25] in general, and furthers the objectives of Section 6(b)(5) of the Act,[26] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions 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. In addition, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5) [27] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Binary KPI Options Are Securities and Standardized Options

As an initial matter, the Exchange's proposal is identical to the proposal made by the Cboe to list binary KPI options.[28] The Exchange believes that the binary KPI options proposed herein would be ''securities'' under the Act.[29] Section 3(a)(10) of the Act [30] defines the term ''security'' to include, among other instruments, ''any . . . option . . . on any security . . . including any interest therein or based on the value thereof.'' [31]

Standardized options are generally offered based on the price of the underlying security or index and include puts, calls, and other complex instruments whose value is based on the price of the underlying security or securities. The binary KPI options will operate in substantially the same manner as these binary options but with a different underlying. The Exchange's proposal would expand the universe of listed options to include contracts based on proposed KPIs, including net income, net sales, net interest income, provision for credit losses, and specified expense metrics, that relate to the valuation of the issuer's stock. Such options contracts would reference financial metrics that are material to the value of the underlying security and are therefore included in the issuer's financial reports submitted to the Commission, including Form 8–K, Form 10–K and Form 10–Q filings.

In addition, the Exchange believes that trading such instruments as binary KPI options would promote a fair and orderly market and facilitate new investment and hedging opportunities on a Commission-regulated exchange. In certain cases, financial instruments may contain features similar to both options contracts and security-based swaps. As compared to characterizing an instrument as a security-based swap, which would typically be traded bilaterally in the over-the-counter (''OTC'') market, categorizing an instrument as an options contract comes with a more robust set of regulatory requirements and market practices that the Exchange believes would aid in the development of such binary KPI options. To the extent there is uncertainty regarding how best to characterize these contracts under the statute, the Exchange believes that the best interpretation is the one that promotes innovation and competition while providing robust investor protection guardrails on a regulated exchange.

As discussed above, the Exchange is proposing to list and trade binary KPI options. The Exchange currently trades standardized options (puts and calls) based on the price of an underlying NMS stock. Binary KPI options would be different from these contracts in primarily two respects: (1) binary KPI options contracts would have a fixed or ''binary'' payout at expiration, regardless of the magnitude of the difference between the option's exercise price and the settlement value for the underlying; and (2) the price of such contracts would be based on the issuer achieving financial metrics that are material to the price of the underlying stock rather than the stock's share price itself. The Exchange does not believe that either of those differences is germane to whether this product is an options contract as defined in the Act.

The Exchange notes that options as defined in Section 3(a)(10) encompass not only options on a security but further include options on any interest in a security or based on the value thereof. This broad statutory language is sufficient to support the trading of binary KPI options on a Commission-regulated options exchange, including contracts that reference an issuer's earnings, revenues, sales, or other financial metrics on which investors traditionally base investment decisions. Such options contracts would reference financial metrics that are material to the value of the underlying security and are therefore included in the issuer's financial reports submitted to the Commission, including Form 8–K, Form 10–K and Form 10–Q filings.

This is consistent with the Commission's own interpretation of the statute when analyzing its application to similar products offered by another national securities exchange. Consider the Commission's approval of proposals by Cboe to list and trade: (1) credit default options; [32] and (2) credit default basket options.[33] As the Commission explained in its order approving credit default options for trading on Cboe, ''credit default options . . . are binary options that are automatically exercised upon the occurrence of specified credit events or expire worthless.'' [34] While such products were therefore different in certain important respects from existing options contracts, ''[a]fter careful analysis, the Commission [found] that credit default options are options based on the value of a security or securities'' [35] and also ''options on an interest in, or based on the value of an interest in, a security or securities.'' The Commission made a similar finding when it later approved Cboe's proposal to introduce credit default basket options.

All of this would also be true of the proposed binary KPI options. Similar to Cboe's credit default options and credit default basket options, the proposed binary KPI options are ''binary options that are automatically exercised upon the occurrence of specified . . . events or expire worthless.'' [36] The Commission has repeatedly found that contracts with a binary payout structure may nevertheless be properly classified as options contracts under the Act and, while most options contracts have historically had a variable payment structure, such a structure is not required by the Act, which does not specify a particular payment structure. In addition, while in some cases binary options offered by other securities

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(b)(5).

[28] *See* Securities Exchange Act Release No. 105877 (July 10, 2026) (SR–CBOE–2026–061) (''Notice of Filing of a Proposed Rule Change to Amend its Rules to Permit the Listing of Binary Options Overlying Key Performance Indicators (''KPIs'') Reported by Certain Issuers of Stock (''Binary KPI Options'')).

[29] The Exchange also believes that binary KPI options are also ''securities'' under the Securities Act of 1933, as amended (the ''Securities Act''). *See* 15 U.S.C. 77b(a)(1).

[30] 15 U.S.C. 78c(a)(10).

[31] *Id.*

[32] *See* Securities Exchange Act Release No. 55871 (June 6, 2007), 72 FR 32372 (June 12, 2007) (SR–CBOE–2006–84).

[33] *See* Securities Exchange Act Release No. 56275 (August 17, 2007), 72 FR 47097 (August 22, 2007) (SR–CBOE–2007–26).

[34] *See* supra note 34.

[35] *Id.*

[36] *Id.*

exchanges have referenced the price of some underlying security or index, such binary options also encompass contracts like the ones discussed above.

The Commodity Exchange Act's (''CEA'') lends further support to the classification of binary KPI options as securities. Specifically, pursuant to Section 3(a)(68) of the Act,[37] a ''security-based swap'' [38] is a ''swap'' [39] as defined in the Commodity Exchange Act that is based on: (1) ''an index that is a narrow-based security index, including any interest therein or on the value thereof;'' [40] (2) ''a single security or loan, including any interest therein or on the value thereof;'' [41] or (3) ''the occurrence, nonoccurrence, or extent of the occurrence of an event relating to a single issuer of a security or the issuers of securities in a narrow-based security index, provided that such event directly affects the financial statements, financial condition, or financial obligations of the issuer.'' [42] In turn, the Commodity Exchange Act defines ''swap'' to include ''any agreement, contract, or transaction . . . that is a put, call, cap floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value, of 1 or more . . . securities.'' [43]

This is also the case with the binary KPI options identified in the proposal. The KPIs selected are ''material to the value'' of a particular security, and payouts of binary KPI options are conditioned on those terms. Indeed, the nexus between the proposed KPIs and the value of the underlying security is, if anything, more direct than in the case of CD options. Whereas CD options reference a credit event (a contingency that may or may not affect the market value of the reference security depending on recovery rates and market conditions), binary KPI options reference the issuer's actual reported financial or operating performance and are the metrics investors consider when determining the value of a stock. Unlike an external event that merely holds the potential to trigger potential financial consequence for a security, each of the proposed KPIs (whether measured at the consolidated or segment level) ultimately constitutes a material component of the issuer's financial results that itself forms the basis for investors' measurements of a company's (and its stock's) intrinsic value.

[37] 15 U.S.C. 78c(a)(68).

[38] *Id.*

[39] 7 U.S.C. 1a(47).

[40] 15 U.S.C. 78c(a)(68)(A)(ii)(I).

[41] 15 U.S.C. 78c(a)(68)(A)(ii)(II).

[42] 15 U.S.C. 78c(a)(68)(A)(ii)(III).

[43] 15 U.S.C. 78c(a)(68)(A)(ii)(III).

Each binary KPI option proposed herein provides a cash payout based on the disclosed KPI, some of which are directly tied to a pecuniary interest in a security, such as earnings per share and others of which are indirectly tied to the pecuniary interest of a security, such as the issuer's net revenue and income, which determine the issuer's capacity to generate returns for security holders. A stockholder's pecuniary interest in a security is not limited to contractual payment rights (such as declared dividends) but encompasses the right to benefit from the issuer's earnings capacity, as reflected in the market price of the security. Binary KPI options based on earnings metrics therefore reference a core component of the stockholder's pecuniary interest.

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

For these reasons, the Exchange believes that binary KPI options, as proposed, are appropriately classified as binary options eligible to trade on a registered national securities exchange and as standardized options subject to the disclosure framework established by Rule 9b–1. This classification reflects the economic substance and standardized structure of the product, is consistent with the Act and the Commission's prior interpretations, and is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster regulatory and clearing coordination, and protect investors and the public interest consistent with Section 6(b)(5) of the Act.[44]

Proposal

The Exchange believes the proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) of the Act,[45] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange believes the proposed list of issuers and KPIs on which the Exchange may list binary KPI options

[44] 15 U.S.C. 78f(b).

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will prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. First, as noted above, the Exchange is proposing to list binary KPI contracts based on specific financial and operating metrics reported by the following issuers in their earnings-related disclosures submitted to the Commission: Apple, Inc.; Advanced Micro Devices, Inc.; Alphabet Inc.; Amazon.com, Inc.; Bank of America Corporation; Citigroup Inc.; Coinbase Global, Inc.; Ford Motor Company; Intel Corporation; JPMorgan Chase & Co.; Marathon Digital Holdings, Inc.; Meta Platforms, Inc.; Microsoft Corporation; Netflix, Inc.; NVIDIA Corporation; Palantir Technologies Inc.; SoFi Technologies, Inc.; Space Exploration Technologies Corp.; Super Micro Computer, Inc.; Target Corporation; Tesla, Inc.; and The Walt Disney Company. The Exchange believes offering investors an additional investment tool on a national securities exchange related to some of the most actively traded stocks and options will perfect the mechanism of a free and open market and benefit investors by allowing them to further refine their investment strategies, including using these options to hedge idiosyncratic, even-specific risk embedded in the specific KPIs (as further discussed below), for these actively traded companies.

The Exchange believes the proposed universe of issuers will prevent fraudulent and manipulative acts and practices, because the proposed issuers are large, well-capitalized, and widely followed issuers with highly liquid underlying securities and options markets. During May 2026, each of the issuers exceeded $3 billion in market capitalization and ranked among the top 200 U.S. companies by average daily options or stock volume, with the exception of Space Exploration Technologies Corp (commonly referred to as SpaceX), which had not been trading for a full calendar month but which the Exchange believes will satisfy these measures with its first month of trading results based on its volumes since it began trading.[46]

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

In addition to the proposed issuers being highly capitalized and having actively traded stocks and options on such stocks, the Exchange also believes the proposed limited universe of issuers for binary KPI options to those proposed will prevent fraudulent and manipulative acts and practices because each issuer is subject to periodic reporting requirements under the Act. Therefore, each of the proposed issuers must file annual reports on Form 10–K, quarterly reports on Form 10–Q, and current reports on Form 8–K with the Commission, which as discussed above disclose information the issuer believes is necessary for an investor to understand its financial condition, changes in financial condition and results of operations, which can include KPIs. Further, each issuer maintains audited financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles (''GAAP'') and is subject to executive certification requirements under the Sarbanes-Oxley Act. As a result, the settlement-determining KPI values for each eligible issuer are produced within the Commission's supervisory jurisdiction, are publicly verifiable from a Commission-regulated source and are subject to relevant anti-fraud provisions under the Act, which the Exchange believes will reduce the potential for manipulation of the underlying KPIs as well as the applicable issuer's stock.

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

The Exchange believes the proposed KPI metrics will similarly prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange's proposal limits eligible KPIs to GAAP and non-GAAP measures and other statistics related to an issuer's financial condition and operational results, all of which the proposed issuers disclose in their earnings-related filings (*i.e.,* Forms 8–K, 10–Q, and 10–K) submitted to the Commission. As such, the settlement values of the proposed binary KPI options are derived exclusively from information that issuers deem as material information required to be disclosed in reports submitted to the Commission. These metrics are routinely referenced and tracked in the investment community and are figures that the market recognizes as a meaningful and central indicator of issuer performance. The Exchange believes that the inclusion of well-established metrics as eligible KPIs expands the value of binary KPI options for investors without compromising the integrity of trading processes, including the settlement process.

The proposed KPI metrics are among the most widely followed and extensively analyzed measures for the proposed issuers. Specifically, the Exchange proposes to be able to list a binary KPI option on earnings per share (prepared in accordance with GAAP) for

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

each proposed issuer. This metric is among the most widely followed and extensively analyzed figures in public company financial disclosure and is disclosed in each issuer's periodic Commission filings. Similarly, the Exchange proposes to list binary KPI options on revenue, prepared in accordance with the applicable GAAP, for each issuer. As is the case for earnings per share, revenue is a widely followed financial metric for publicly reporting companies and is the subject of extensive analyst coverage.

The Exchange proposes KPIs representing revenues broken out by appliable reportable segment, business unit, or product category, including cloud and artificial intelligence infrastructure revenues, streaming and geographic subscription revenues, automotive segment revenues, financial services segment revenues, consumer product category revenues, and digital asset exchange transaction and subscription revenues, among others, for several of the proposed issuers. Each such metric is a GAAP-defined figure required to be disclosed in the issuer's periodic Commission filings. The Exchange understands these metrics enable market participants to express views on specific high-profile business lines that are extensively covered by analysts and subject to a high volume of publicly available forecasts.

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

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

The Exchange also proposes several non-financial operational KPIs that issuers disclosed in their periodic Commission filings, including relevant production volumes, network and infrastructure counts, user engagement metrics, deal counts, digital asset trading volume, and digital asset mining and holdings metrics. Each designated non-financial operational metric is closely tied to the core economic activity of the respective issuer's business and is a figure that the issuer has affirmatively chosen to disclose to the public as a key indicator of business performance. Issuers typically designate and disclose such metrics precisely because they are understood by the market to be among the most meaningful measures of their business activities. As discussed above, this is consistent with Commission guidance that an issuer should include KPIs in these report that the issuer believes an investor needs to gain understanding of its financial condition, changes in financial condition and results of operations, as such KPIs present the ''pulse'' of the issuer's business. The market significance of these metrics is further reflected in the extensive analyst coverage and investor attention, particularly near each reporting date. Each metric is subject to executive certification as part of the periodic report in which it appears and is widely tracked by financial data services and equity research analysts.

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

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

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

The proposed definition of settlement value for binary KPI options is generally similar to the definition for binary index options (as previously approved by the Commission), with certain differences necessary to be addressed due to the different nature of a KPI as the underlying. The Exchange believes the proposed $1 exercise settlement amount is reasonable given the retail nature of the proposed binary KPI options and merely adds specificity to the Rules for binary KPI options. The Exchange notes binary KPI options differ from standardized index options (which are also cash-settled) in that the exercise settlement amount is $1.00 rather than the cash difference amount between the settlement value of the index and the strike price of an option. Since the $1.00 exercise settlement amount will be paid out to the option holder if the criteria of the binary KPI option have been met, binary KPI options utilize a fixed exercise settlement amount.

The Exchange proposes new Rule 901KPI to list the specific binary KPI contracts with the KPI criteria for each option contract. Such KPI criteria are established as the set KPI events that will be used to determine an option contract should be exercised by comparing the strike price of the binary KPI option to the KPI value. The Exchange believes these proposed contracts (including the issuers and KPIs) are consistent with the Act for the reasons set forth above.

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

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

As the Exchange does for standard options, as well as binary index options, the Exchange lists strikes (subject to its Rules) based on relevant market information—including the then-current value of the underlying—and customer demand. As described above, the Exchange intends to do the same for binary KPI options by listing strikes relative to the then current value of the underlying KPI. The Exchange believes it is consistent with just and equitable principles of trade to permit the Exchange to list strikes for a new expiration based on the most recently disclosed KPI value, which may not be for the immediately preceding reporting period, and then add strikes based on the disclosed KPI for the immediately preceding reporting period (which would be the settlement value for binary KPI options that expire in the prior reporting period). This will enable the Exchange to respond to changes in market conditions in the same manner it is able to do today to respond to changes in values of (and market conditions related to) other underlyings. The Exchange believes this flexibility is appropriate for binary KPI options because the value of a KPI changes only when an issuer discloses that KPI, which generally happens every three months, unlike other underlyings that change every trading day. While this proposed strike listing regime differs from that of other options, the concept is the same, which is to permit the Exchange to list strikes reflective of the then-current value of the underlying. It is possible the changed value of an underlying KPI may be more sudden and pronounced than changes in the value of an underlying equity or index (which are susceptible to sudden value changes); however, like the listing rules for equity and index options, the proposed rules permit the Exchange to list strikes to reflect potentially significant changes in the value of the underlying.

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

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

Further, as discussed above, the proposed strike intervals are consistent with current rules for other options, which provide for larger strike intervals as the value of strike prices increases. Given the scaling factor for larger KPI values, while it may appear the proposed rule change will permit smaller strike intervals for larger KPI values, that may be true on a nominal basis but is not the case if the actual value of the strike intervals is considered. The corresponding actual value of the strike interval for a strike price that was subject to a larger scale value is higher than the actual value of the strike interval for a strike price that was subject to a smaller scale value. As a result, the permissible strike intervals for strike prices representing higher KPI values are actually larger than the permissible strike intervals for strike prices representing lower KPI values. This is consistent with general premise underlying current strike intervals that larger strike intervals apply to larger strike values and, therefore, the Exchange believes the proposed rule change will promote just and equitable principles of trade.

The Exchange believes this proposed rule change clearly describes the proposed terms of binary KPI options, such as with respect to expirations (including the Exchange's announcement of the specific expiration date after binary KPI options series for that expiration are listed) and exercise prices (including the scaling factor, negative values, and potential changes to that scaling factor for a binary KPI option class) for all investors. As discussed above, these terms and changes to such terms will be described in Exchange notices, technical specifications (including binary KPI option reference data files), and contract specifications (all of which are posted on the Exchange's public website and thus available to all investors). Exchange ATP Holders and retail brokerage firms are highly sophisticated investors that intake information regarding other Exchange-listed options (including changes) in the same manner that the Exchange plans to release this information for binary KPI options. Therefore, the Exchange expects retail customers to have access to all relevant information regarding the terms of binary KPI options they choose to trade, including changes to expiration dates and exercise price values as announced by the Exchange.

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

The Exchange believes proposed Rule 905KPI, which establishes Regular Trading Hours for binary KPI options is consistent with the Act, protects investors, and prevents fraudulent and manipulative practices. The Exchange believes the proposed structure ensures that trading in binary KPI options ceases before the earnings announcement that determines settlement. The distinction between A.M.- and P.M.-settled contracts mirrors the settlement terms already applicable to binary index options, as well as other Exchange products.

The Exchange believes proposed Rule 905KPI(e), which provides that for binary KPI options, the System initiates the opening rotation at 9:30 a.m., removes impediments to a free and open market by applying the same proven opening process to binary KPI options that governs other listed options classes on the Exchange. Additionally, unlike equity options, for which the underlying opens for trading and can trigger the opening rotation, KPIs do not trade, so triggering the opening rotation based on a set time is reasonable for binary KPI options.

The Exchange believes excluding binary KPI options from the obvious error provisions in Rule 975NY is consistent with the Act and promotes just and equitable principles of trade because the standard obvious error framework, which evaluates whether an execution price deviates from a ''theoretical value'' by a prescribed amount, is incompatible with the structure of binary KPI options. Binary KPI options have no continuously observable theoretical value (unlike equity and index options) prior to the date of the earnings-related disclosure. Rather, their exercise settlement amount is fixed at either a pre-specified dollar amount or zero, depending entirely on whether the reported KPI satisfies the exercise condition, which itself is based on a single, publicly verifiable metric, disclosed in Commission filings. Applying an obvious error framework premised on theoretical value calculations to a product with a binary, fixed payout would be technically inapplicable and could produce unjust or arbitrary results. Moreover, because settlement of binary KPI options is determined by issuer-reported metrics disclosed through Commission filings (*i.e.,* figures produced pursuant to established accounting standards, subject to independent audit, and certified under the Sarbanes-Oxley Act), the settlement process is itself governed by a comprehensive external regulatory framework. The Exchange believes that establishing any alternative dispute mechanism in this context would be not only unnecessary, but potentially disruptive to market integrity, as it may introduce an element of post-hoc discretion into a settlement process that is expressly designed to be objective, verifiable, and rule-bound.

The Exchange believes the proposed amendments related to position limits for binary KPI options are consistent with the Act because they establish a rational position limit framework for binary KPI options that protects against manipulation while facilitating legitimate trading activity in a novel product. The Exchange believes that setting the position limit for binary KPI options as the same as the applicable position limit for the stock of the issuer, with 100 binary KPI option contracts equaling one standard option contract, is appropriate. As proposed, binary KPI options with a multiplier of one will count toward applicable limits on a proportional basis relative to standard equity options on the issuer's stock, which carry a multiplier of 100.

The Exchange further believes the proposal is reasonable given the nature of binary KPI options and their relationship to the underlying issuer. Because binary KPI options have a fixed maximum notional value and settle on an all-or-nothing basis based on a KPI of the issuer rather than the price of the issuer's stock as with a standard equity option, the Exchange believes the proposed position limits appropriately reflects the distinct structure of these contracts and limits the potential for any single market participant to exert undue influence over binary KPI option settlement. With respect to binary KPI options, the economic risk of a position is binary, in that the contract either settles in-the-money at $1.00 or out-of-the money at $0.00. Additionally, with respect to binary KPI options, the maximum notional exposure per contract is fixed in advance; it cannot exceed $1.00 multiplied by the contract multiplier. Moreover, unlike stock prices or index values, binary KPI option positions would not influence a company's financial or operational outcomes; the number of option contracts outstanding or trading volume, for instance, has no effect on revenue or operational metrics.

Further, the Exchange's proposal to provide that positions in binary KPI options on the same KPI with different expiration dates and positions in binary KPI options for the same issuer with different underlying KPIs are not aggregated reflects the distinct structure of binary KPI options. Each binary KPI option expiration corresponds to a separate event tied to a specific issuer reporting period. Thus, the Exchange believes aggregating positions across different expiration dates would not accurately reflect the risk profile of these positions and would impose an unnecessary burden on market participants seeking exposure to company KPI events across different reporting periods. In determining that position limits should not be aggregated across all binary KPI options referencing a single issuer, the Exchange analyzed the degree to which KPIs of a given issuer are correlated with one another.

Similarly, the Exchange believes it is reasonable to provide that binary KPI options are not aggregated with non-binary options contracts overlying the stock of the issuer. Because binary KPI options and equity options overlying the same issuer have different risk profile (*i.e.,* binary KPI options settle based on a KPI of the issuer rather than its stock price), the Exchange believes it would be inappropriate and misleading to require aggregation of these positions for purposes of position limits. As noted above, binary KPI options are based solely on whether a single, specified-issuer KPI meets a discrete threshold at a defined future date, and their value reflects the market's probability assessment of that singular outcome. Standard equity options, on the other hand, reflect a broad array of factors bearing on the price of the underlying security, including macroeconomic conditions and sector dynamics, of which any individual KPI is only one component. Because the two products are not priced off of a common reference and do not represent economically equivalent or fungible exposures, aggregating positions across them would not meaningfully advance the prevention of manipulative practices with respect to the underlying security.

The Exchange further notes that this proposed non-aggregation framework is not unprecedented. Rule 904ByRDs provides that positions in binary return derivatives shall not be aggregated with options contracts on the same or similar underlying security. The Exchange believes that there was no need to aggregate positions across the two product types to prevent manipulative practices involving the underlying.

Finally, the Exchange believes the amendments to the hedge exemption provision in proposed Rule 906KPI(d) is consistent with the Act because it facilitates legitimate hedging activity in binary KPI options. Because a market participant simultaneously holding a short put and short call position in binary KPI options has taken opposing sides of the potential binary outcome (*i.e.,* the short call is at risk if the KPI is met and the short put is at risk if the KPI is not met), the Exchange believes such a position represents a defined, bounded risk profile that does not present the same potential for manipulation or market disruption that position limits are designed to prevent. The Exchange therefore believes the hedge exemption as proposed will encourage market-making activity and liquidity provision in binary KPI options while protecting investors and the public.

The Exchange also believes the proposed adoption of Rule 907KPI consistent with the Act. By establishing tailored reporting requirements for binary KPI options, the Exchange will be able to monitor ATP Holder positions effectively and detect any accumulation of positions that may approach or exceed applicable limits, to the benefit of investors. The Exchange believes it is consistent with just and equitable principles of trade for 100 binary KPI option contracts to equal one standard option contract for purposes of determining whether the report in proposed Rule 907KPI is required given the size of binary KPI contracts. As discussed above, proposed binary KPI options have a multiplier of one, while standard option contracts have a multiplier of 100. Therefore, the notional value of a binary KPI option is significantly less than the notional value of standard option contracts. For example, 200 contracts with a value of $1.00 with a multiplier of 100 would equate to $20,000 notional value, while 200 binary KPI option contracts with a value of $1.00 (which is the fixed maximum value of a binary KPI option contract) with a multiplier of one would equate to $200 notional value. Counting 100 binary KPI contracts as one standard option contract for purposes of this report effectively calibrates the reporting requirement so that investors are required to submit the report for an economically equivalent number of contracts, which promotes just and equitable principles of trade.

The Exchange believes the proposal will provide the Exchange and regulators with visibility into large position concentrations in binary KPI options, preserving the ability to identify unusual activity and respond to any unforeseen concerns, while calibrating the threshold to a metric that is meaningful for this contract given its smaller multiplier relative to that of standard equity options. The Exchange believes this reporting framework, coupled with the position limits amendments, provides a fully adequate regulatory framework for these instruments.

Further, as noted above, the Exchange believes it has an adequate surveillance program in place to detect potentially manipulative trading in binary KPI options. The Exchange notes that manipulation of the reported KPI would constitute securities fraud and expose the issuer to liability under federal securities law, separate and apart from any exchange-related violation.

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

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

The proposed rule change will permit the Exchange to list binary KPI options on a national securities exchange as alternatives to products that are structured in substantially the same manner as binary options currently available in the OTC market and on other platforms. The Exchange understands investors have traded binary options similar to the proposed binary options in OTC markets for many years but may prefer to trade such options in a listed environment to receive the benefits of trading listing options. These benefits include: (1) enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness. The Exchange believes the proposed rule change may encourage liquidity to shift from the OTC market onto the Exchange, which the Exchange believes would increase market transparency as well as enhance the process of price discovery conducted on the Exchange through increased order flow. The proposed rule change is intended to provide a market for binary KPI options as a standardized product without the credit risk of an individual issuer. By providing a listed and standardized market for more classes of binary options, the Exchange seeks to attract investors who desire the simplicity of a binary option with the certainty and safeguards of a regulated and standardized marketplace. Additionally, unlike an OTC binary option, counterparty credit risk for Exchange-listed binary KPI options is significantly reduced through the issuance and guarantee of the contracts by a registered clearing agency. Further, as an exchange-traded option, binary options will have the advantage of liquidity provided by Market-Makers, which the Exchange believes may lead to tighter spreads than those in the OTC market. The Exchange also believes that standardization will enable more interested parties to become market participants.

In addition to the OTC market, various market platforms that are not registered as national securities exchanges currently offer products structured in substantively the same manner as binary options that the Exchange may list pursuant to current Rules and as proposed. These platforms offer binary option products overlying securities indexes, which may be settled at varying points of the day (not just at the open and close of the trading day). However, as these venues are not national securities exchanges, they do not offer investors the benefits of centralized liquidity, market transparency, or securities regulations intended to protect investors. The Exchange believes listing competitive products on a national securities exchange would create a centralized and standardized marketplace for these products, which promotes price discovery and transparency, within an established regulatory framework designed to afford investors in securities with important protections. In other words, the Exchange believes its proposal offers a more transparent platform than the OTC market or other market platforms offer. It would contribute to leveling the playing field with these alternative markets and provide investors with safeguards associated with Commission and SRO oversight of the trading activity in these exchange-listed binary KPI options.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because binary KPI options will be available to all market participants who wish to trade such options on the same terms and in the same manner (including with respect to the payout terms and amount). All market participants will be subject to the same rules applicable to binary KPI options, as described in this proposed rule change. Except as set forth in the proposed rule change, binary KPI options will trade in the same manner as other options, including binary index options, on the Exchange.

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

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

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

No written comments were solicited or received with respect to 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*. Please include file number SR–NYSEAMER–2026–82 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–NYSEAMER–2026–82. 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–NYSEAMER–2026–82 and should be submitted on or before October 9, 2026.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2026–19132 Filed 9–17–26; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–106386; File No. SR–GEMX–2026–32]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 2, Section 3, Appointment of Market Makers

September 15, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on September 2, 2026, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

The Exchange proposes to amend Options 2, Section 3, Appointment of Market Makers.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rulefilings,* 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 Options 2, Section 3, Appointment of Market Makers, at paragraph (b) to change the current requirement that a Primary Market Maker (''PMM'') [3] shall be appointed to each options class traded on the Exchange. The Exchange proposes instead to state that a PMM *may* be appointed to each options class traded on the Exchange. The proposed amendment would replace a mandatory requirement to appoint a PMM to every options class with a permissive standard, affording the Exchange the flexibility to determine, based on prevailing market conditions and the availability of qualified applicants, whether a PMM appointment is appropriate for a particular options class.

Today, there are a number of Competitive Market Makers (''CMMs'') [4] on GEMX that would continue to provide liquidity in the absence of a PMM appointment under this proposal. CMMs are subject to continuous quoting and other market making obligations set forth in Options 2, Section 4 (Obligations of Market Makers), and are required to provide two-sided quotations in 60% of the series in each of the option classes to which they are appointed pursuant to the quoting requirements of Options 2, Section 5 (Market Maker Quotations). CMMs are also not capped in number and may actively quote in a broad range of option classes.

The proposed amendment aligns GEMX's rule with Nasdaq Phlx LLC (''Phlx'') Options 2, Section 12(a) [5] which expressly permits, but does not require, Phlx to designate a Lead Market Maker for a particular options series. In addition, until July 2026, The Nasdaq Options Market LLC (''NOM'') did not adopt rules for a class of market maker similar to a PMM. NOM operated its markets for nearly twenty years without such a category of market maker. The Exchange believes that the current mandatory standard is not necessary to protect investors or to ensure a fair and orderly market on GEMX. Options classes traded on the Exchange vary widely in their liquidity profiles, order flow, and level of market maker interest. Circumstances may arise in which no eligible Member seeks or is well-suited for a PMM appointment in a particular options class, or in which appointing a PMM is not economically viable for any prospective applicant. The Exchange will monitor instances in which a PMM is not fulfilling its obligations or is not in good standing and will seek to replace it with another qualified PMM. In those cases, the mandatory standard in the current rule provides no operable path forward. A permissive standard would enable the Exchange to determine, on a class-by-class basis, whether a PMM appointment serves the interests of the market and the investing public.

The proposed change is not intended to, and would not, alter the substantive obligations or privileges of a PMM once appointed. A PMM appointed to an options class would remain subject to the full set of obligations set forth in GEMX Options 2, Sections 3, 4, and 5, including the Valid Width Quote requirement during the Options Opening Process in Options 3, Section 8, and the 90% two-sided quoting obligation on an intra-day basis. The Exchange further notes that CMMs are available to provide liquidity in options classes traded on the Exchange, and the appointment of a PMM is not a prerequisite for maintaining a fair and orderly market in any given class. In options classes for which no PMM is appointed, quoting and liquidity provision would proceed pursuant to the CMM framework in Options 2, Sections 4 (Obligations of Market Makers) and 5 (Market Maker Quotations).

[47] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(b)(35).

[4] The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(b)(12).

[5] Phlx Options 2, Section 12(a) provides that a Lead Market Maker is not required to be assigned to an options series. A Lead Market Maker on Phlx is analogous to a Primary Market Maker on GEMX.