Paradigm

Submitted via SEC Internet Comment Form

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, D.C. 20549-1090

August 5, 2026

Re: Response to Notice of Filing of a Proposed Rule Change by Cboe Exchange, Inc. To Permit the Listing of Binary Options Overlying Key Performance Indicators (File No. SR-CBOE-2026-061; Release No. 34-105877)

Dear Secretary Countryman,

Paradigm Operations LP ("Paradigm") is a frontier technology investment firm that invests and builds in crypto, AI, robotics, and across new frontiers from the earliest stages.[1] Paradigm supports the broad availability of well-regulated markets for innovative financial products, including event based and binary payoff instruments. Such markets are technologically innovative, a valuable source of information to the public, and a means for market participants to hedge exposure to specific future outcomes.

Paradigm brings a valuable perspective and a wealth of experience to the questions raised by the proposal of Cboe Exchange, Inc. (the "Exchange") to amend its rules to permit the listing of binary options overlying key performance indicators ("binary KPI options") reported by certain issuers of stock (the "Proposal"), as published in the Federal Register on July 15, 2026.[2] Paradigm has commented on the Commodity Futures Trading Commission ("CFTC") Advance Notice of Proposed Rulemaking regarding event contracts[3] and on the CFTC's pending rulemaking concerning prediction markets,[4] and has appeared as an amicus party in multiple cases concerning the regulatory treatment of event contracts.[5]

We believe that the U.S. Securities and Exchange Commission (the "SEC" or the "Commission") should take no action to approve or disapprove the Proposal at least until the SEC and the CFTC (together, the "Commissions") have an opportunity to review submitted comment letters in connection with the joint definitional process they have already begun (the "Joint

[1] More information about Paradigm is available online at https://www.paradigm.xyz.
[2] Securities Exchange Act Release No. 105877 (July 10, 2026), 91 FR 43418 (July 15, 2026) (SR-CBOE-2026-061).
[3] *See* Paradigm Comment Regarding CFTC's Advance Notice of Proposed Rulemaking, available at https://assets.ctfassets.net/vb2n37v5ldjn/asset-https-cdn-sanity-io-files-dgybcd83-p-267c5629ff/800b1527e246d4ded1d01bb1f27a66e7/asset-https-cdn-sanity-io-files-dgybcd83-p-267c5629ff.pdf (Apr. 30, 2026).
[4] *See* Paradigm Comment on the CFTC's Notice of Proposed Rulemaking, Prediction Markets; Public Interest Determinations (RIN 3038-AF65) (July 27, 2026).
[5] *See, e.g.,* Amicus Curiae Br. of Paradigm Operations LP in Support of Appellant, *North American Derivatives Exchange, Inc. v. State of Nevada, et al.*, No. 25-7187 (9th Cir. Jan. 15, 2026), Dkt. No. 15; Amicus Curiae Br. of Paradigm Operations, *KalshiEX LLC v. Orgel*, No. 26-5235 (6th Cir. June 24, 2026), Dkt. No. 66.

Request"),[6] and the Commission should use as much of the full deliberative schedule Congress provided in Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") as necessary to ensure that its consideration of the Proposal is informed by that Joint Request process.

To that end, Part I of this letter explains why the Joint Request process should be allowed to conclude prior to any action being taken on the Proposal. Part II sets out the statutory schedule, running to March 12, 2027 on the present filing, that allows for sufficient time for the Joint Request process to inform a decision on the Proposal. Part III benchmarks the Proposal against its closest analogues, which trade today on a CFTC designated contract market, and explains why neither product family's treatment should prejudge the other's.

I. Priority of the Joint Request Process

On June 24, 2026—nearly a week before the Proposal was filed and three weeks before it was published—the Commissions jointly requested public comment on "potential ways to draw clearer regulatory lines with respect to innovative products that may implicate both SEC and CFTC regulatory interests."[7] The Joint Request implements the Commissions' March 2026 Memorandum of Understanding (the "MOU"), in which the agencies committed to coordinate in areas of common regulatory interest where collaboration can enhance regulatory effectiveness and market integrity.[8] Question 8 of the Joint Request asks whether there are "circumstances in which an event contract that references one or more securities should or should not be considered a 'put, call, straddle, option, or privilege on' a security or group or index of securities" for purposes of the statutory exclusion from the definitions of "swap" and "security-based swap." In language with direct implications for the Proposal, it asks: "What are the characteristics of event contracts based on a security or index that are swaps or SBS, that distinguish them from options on securities, including in particular binary options that already trade as standardized options on securities on national securities exchanges?"[9]

The Proposal squarely presents those same questions, which are neither academic nor uncontested, as their inclusion in the Joint Request and the Proposal's detailed treatment of them confirms. Indeed, the Proposal devotes an extended discussion (spanning three Federal Register pages) to the Exchange's argument that binary KPI options are "securities" under Section 3(a)(10) of the Act because they are based on the value of, or on an interest in, securities, and that they are therefore excluded from the definitions of "swap" and "security-based swap" by operation of section 1a(47)(B)(iii) of the Commodity Exchange Act.[10] That is the very analysis on which the

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[6] Joint Request for Comment on Further Definition of "Swap" and "Security-Based Swap" and on Alternative Compliance, Securities Act Release No. 11424, Securities Exchange Act Release No. 105735, 91 FR 37873 (June 24, 2026) (File No. S7-2026-21).
[7] Joint Request, 91 FR at 37873.
[8] *See* SEC & CFTC, Memorandum of Understanding between the U.S. Securities and Exchange Commission and the U.S. Commodity Futures Trading Commission regarding Harmonization in Areas of Common Regulatory Interest (Mar. 11, 2026), available at https://www.sec.gov/files/mou-sec-cftc-2026.pdf; *see also* Joint Request, 91 FR at 37874.
[9] Joint Request, 91 FR at 37876 (Question 8).
[10] Proposal, 91 FR at 43428–31; *see* 15 U.S.C. § 78c(a)(10); 7 U.S.C. § 1a(47)(B)(iii).

Commissions have jointly solicited public comment.[11] An approval order issued now would necessarily adopt answers to those questions through a single registrant's rule filing while the Commissions' own joint comment file remains open or under active review. It would, in short, prejudge and short circuit the joint process.

Comments on the Proposal are due August 5, 2026, twenty-one days after publication.[12] Comments on the Joint Request are not due until August 24, 2026.[13] The record on which the Commission would act on this filing will therefore close nineteen days before the Commissions' Joint Request record has even been assembled, despite the fact that the Proposal was published twenty-one days *after* the Joint Request.

Beyond the timing, the Joint Request is the more robust process for resolving the questions presented in both filings. Congress gave the Commissions joint authority to further define the operative terms and directed them to treat functionally or economically similar products in a similar manner.[14] The Joint Request proceeds under that joint authority, on a public, economy-wide record, with data-driven input expressly invited[15] and with the answers to be given by both involved agencies. Definitional criteria adopted through that process will be principled, objective, and durable across product classes, trading venues, and clearing arrangements. By contrast, definitional reasoning embedded in a Section 19(b)(2) order is instrument specific and adjudicative in character. It rests on whatever record happens to be assembled in a compressed comment window and does an injustice to resolving the broader question on which the Commissions have sought public input.

Moreover, because of the involvement of two agencies, the broader matters addressed, and the high-level perspective it invites, the Joint Request will draw on a broader array of constituents. The Joint Request is addressed to participants across both Commissions' markets: national securities exchanges and designated contract markets; clearing agencies and derivatives clearing organizations; broker-dealers and futures commission merchants; the issuers whose reported metrics would underlie the proposed contracts; institutional and retail investors; and academics. Conversely, individual SRO rule filings are monitored by a comparatively narrow professional audience. A twenty-one day window at the height of summer—particularly where, as here, interested market participants will have rightly assumed that these questions are being addressed through the Joint Request—will undoubtedly further limit participation.

Prioritizing the definitional work allows for the deliberate and thoughtful approach these questions require and that the Commissions have promised each other. The MOU and the Joint

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[11] The Proposal also implicates Question 7 of the Joint Request, which asks when an event "directly affects" an issuer's financial statements, financial condition, or financial obligations for purposes of the security-based swap "event contract" prong. *See* Joint Request, 91 FR at 37876 (Question 7); *see also* 15 U.S.C. § 78c(a)(68)(A)(ii)(III).
[12] Proposal, 91 FR at 43439.
[13] Joint Request, 91 FR at 37873.
[14] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 712(d)(1), 124 Stat. 1376 (2010); *id.* § 712(a)(7)(A) (directing the Commissions to "treat functionally or economically similar products or entities . . . in a similar manner"); Further Definition of "Swap," "Security-Based Swap," and "Security-Based Swap Agreement"; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 (Aug. 13, 2012).
[15] Joint Request, 91 FR at 37877 ("The Commissions encourage commenters to provide data-driven input.").

Request commit the agencies to coordinate to "reduce regulatory gaps and provide greater certainty regarding regulatory responsibility in support of efficient markets and lawful innovation."[16] Resolving the classification of a novel instrument through a unilateral approval order in the middle of a joint comment process, particularly where the CFTC has already allowed KPI contracts to be traded as swaps, is inconsistent with that commitment and is likely to lead to confusion, rather than clarity.

Deferral is also costless. With respect to the Exchange, and by the Exchange's own account, the Proposal could not be implemented today even if it were approved. Binary KPI options are to be cleared by Cboe Clear US, LLC ("CCUS"), which is still seeking temporary registration as a clearing agency under Section 17A of the Act and the Exchange "represents it will not list for trading binary KPI options until all applicable filings and documents of CCUS and FINRA related to binary KPI options being cleared through CCUS are approved by the Commission or effective after review by the Commission."[17] The options disclosure document required by Rule 9b-1 remains pending before the Commission.[18] The separate binary index options filing on which the Proposal's rule framework is built and which the Proposal simply "deem[s] . . . as approved" itself remains pending and the Exchange has stated that it intends to amend it.[19]

And beyond the Exchange itself, changes also remain to be made to two national market system plans. The Options Listing Procedures Plan, which sets forth uniform procedures to facilitate the listing and trading of standardized options, currently describes procedures only for options issued by and cleared at the Options Clearing Corporation and would need to be amended to cover options cleared by CCUS. The OPRA Plan, the plan under which the Options Price Reporting Authority ("OPRA") collects and disseminates consolidated options quotation and transaction information, contains provisions that turn on volume cleared at the Options Clearing Corporation, and the Exchange and CCUS are still working with OPRA on a process for reporting binary KPI option open interest.[20]

Each of these is an independent prerequisite to launch and none is before the Commission in this filing. Holding the Proposal in abeyance pending completion of the Joint Request process therefore denies nothing while an early approval would produce an order that could not yet be exercised but that would nonetheless have broad implications on the process the Commissions have selected for addressing these questions. Nothing needs to be done and nothing should be done to approve the Proposal until the Joint Request process has run its course.

II. The Commission's Authority

Critically, the Act does not require that the Commission be coerced by a registrant into making a hasty decision. Section 19(b)(2) of the Act establishes a graduated schedule that gives

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[16] Joint Request, 91 FR at 37874.

[17] Proposal, 91 FR at 43427 (CCUS "is seeking temporary registration as a registered clearing agency under Section 17A" of the Act); *see* 15 U.S.C. § 78q-1.

[18] Proposal, 91 FR at 43419 n.4, 43427; *see* 17 CFR 240.9b-1.

[19] Proposal, 91 FR at 43419 n.3.

[20] Proposal, 91 FR at 43427–28 & n.46.

the Commission up to March 12, 2027, i.e., 240 days from Federal Register publication, to approve or disapprove the present filing and procedural tools for deepening the record.[21] Paradigm respectfully urges the Commission to use each step of that schedule as necessary to ensure appropriate consideration and, in light of the questions of first impression the Proposal presents, respectfully suggests that any order approving or disapproving it should issue from the Commission itself rather than by delegated authority.

First, the Commission should extend the initial review period to the statutory maximum. The initial 45-day review period expires on August 29, 2026, five days after the Joint Request comment file closes. Under Section 19(b)(2)(A)(ii), the Commission may designate a longer period, up to 90 days from publication (here, October 13, 2026) upon finding that a longer period is appropriate and publishing its reasons.[22] Those findings should include that the Proposal presents questions of first impression regarding a novel product class that the Exchange itself describes as retail oriented,[23] it would introduce the first standardized options whose settlement value is a reported financial or operating metric rather than a traded price or index level, and the Commission cannot reasonably evaluate the Exchange's statutory analysis without reviewing responses to the Joint Request that will barely have arrived by the initial deadline.

Second, rather than act by October 13, 2026, the Commission should, as appropriate in light of the comments to the Joint Request and the Commissions' responses thereto, institute proceedings under Section 19(b)(2)(B) to determine whether to approve or disapprove the Proposal. Instituting proceedings requires only notice of "the grounds for disapproval under consideration" and an opportunity for hearing.[24] As the Commission routinely emphasizes when it takes this step, it reflects no conclusion on the merits.[25] Moreover, proceedings would permit the Commission to solicit a second, more inclusive round of public comment and to put targeted questions to the Exchange, including how its analysis should be evaluated against whatever criteria emerge from the Joint Request. These proceedings must be concluded, and an order issued, within 180 days of publication, i.e., by January 11, 2027.[26]

Third, again as necessary to ensure full consideration of the Joint Request, the Commission should extend the proceedings by the additional 60 days the statute permits (to March 12, 2027) upon publishing its reasons for determining that a longer period is appropriate or with the Exchange's consent.[27] The pendency of the Joint Request, and any rulemaking, interpretation, or

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[21] 15 U.S.C. § 78s(b)(2); *see* Proposal, 91 FR at 43439.
[22] 15 U.S.C. § 78s(b)(2)(A)(ii).
[23] *See* Proposal, 91 FR at 43433 (describing "the retail nature of the proposed binary KPI options"); *id.* at 43434 & n.84.
[24] 15 U.S.C. § 78s(b)(2)(B)(i).
[25] *See, e.g.,* Securities Exchange Act Release No. 101322 (Oct. 11, 2024), 89 FR 83724 (Oct. 17, 2024) (SR-CboeBZX-2024-055) (order instituting proceedings) ("Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved."); Securities Exchange Act Release No. 101194 (Sept. 26, 2024), 89 FR 80296 (Oct. 2, 2024) (SR-FICC-2024-009) (order instituting proceedings) (same).
[26] 15 U.S.C. § 78s(b)(2)(B)(ii)(I).
[27] 15 U.S.C. § 78s(b)(2)(B)(ii)(II).

guidance the Commissions issue in response to it, would almost certainly support that determination.

These dates deserve careful calendaring, because approval by default would be a uniquely inappropriate way for a novel product class to enter the national market system.[28] If March 12, 2027 approaches and the joint definitional process remains unresolved, the established and appropriate course is for the Exchange to amend and republish, or to withdraw and resubmit, the Proposal, thereby commencing a fresh statutory period, rather than for the Commission to act on an incomplete record or to permit approval by default, which serves neither the Exchange nor the broader marketplace. Failing amendment or withdrawal, disapproval without prejudice to resubmission once the definitional process concludes would better serve the Exchange and the marketplace than approval by default on an incomplete record.

III. Other KPI Contracts

To be crystalline, in urging this approach, Paradigm does not suggest that binary KPI options are interchangeable with the contracts traded on CFTC designated contract markets. There are KPI contracts listed today on a CFTC-regulated designated contract market that pay a fixed amount depending on whether a company's reported financial or operating metrics meet a specified threshold for a reporting period. The Proposal observes that platforms not registered as national securities exchanges "offer binary option products overlying securities indexes, which may be settled at varying points of the day," and that binary KPI options would be traded by "the same retail customer base that trade binary options (and KPI-related contracts) today."[29] The binary KPI options are the counterpart to these KPI contracts.[30]

While there is an economic resemblance stemming from shared reference data, the products are structurally distinct at nearly every step. Binary KPI options would be standardized put and call classes with graduated strike ladders, clearing through a Commission-registered clearing agency.[31] The KPI contracts are structured instead as event contracts under the Commodity Exchange Act, with terms, settlement sources, and settlement times fixed by contract rules submitted to the CFTC, traded and cleared within the designated contract market framework that the CFTC is actively refining in its pending prediction markets rulemaking.[32]

That pairing, the same economic exposure in a different instrument architecture, is what Question 8 places before the Commissions when it asks what "characteristics" distinguish event contracts based on a security or index from "binary options that already trade as standardized options on securities on national securities exchanges."[33] Which characteristics matter, and how much, should be resolved by both Commissions on the Joint Request record, not implied through

[28] *See* 15 U.S.C. § 78s(b)(2)(D) (a proposed rule change is "deemed to have been approved" if the Commission neither acts nor institutes proceedings within the initial review period, or fails to issue an order by the close of proceedings).
[29] Proposal, 91 FR at 43438; *id.* at 43431.
[30] *See* Proposal, 91 FR at 43431.
[31] Proposal, 91 FR at 43419-21 (contract terms and settlement); *id.* at 43427 (clearing through CCUS).
[32] *See supra* note 4.
[33] Joint Request, 91 FR at 37876 (Question 8).

one exchange's rule filing. Paradigm intends to submit comments in response to Question 8 of the Joint Request (among other questions) and, to the extent the Commission extends its initial review as suggested in Part II, will cross-file those comments in this docket as a supplement to this letter. The Commission should ensure that it has the benefit of those comments—as well as the comments of other industry participants who have undoubtedly targeted the well-publicized Joint Request as the appropriate venue for such comments—before rendering a decision on the Proposal. Doing so will ensure that any eventual order decides no more than the filing requires and carries no unintended implications for contracts traded in markets regulated by the CFTC.

IV. Conclusion

The Proposal reaches the Commission at (in fact, *after*) the precise moment the Commissions have jointly undertaken to draw the lines it implicates. That timing, while almost certainly not coincidental, is an opportunity. Paradigm therefore respectfully urges the Commission to take no action to approve the Proposal until the Joint Request process is complete and, as necessary, to: (1) designate the extended 90-day review period by August 29, 2026; (2) institute proceedings under Section 19(b)(2)(B) by October 13, 2026, with a further round of public comment; (3) extend those proceedings to March 12, 2027; and (4) look to amendment and republication, withdrawal and resubmission, or disapproval without prejudice, rather than default approval, if still more time proves necessary. Thus, the Commission need not reject or prejudge anything; it need only decide the general before the particular with the benefit of the broader record the Commissions' own joint process is now assembling. Paradigm believes that approach will best serve market integrity and responsible innovation in both regulatory environments.

If you have further questions regarding our comments on the Proposal, you can contact us at Stefan@Paradigm.xyz.

Sincerely,

/s/ Stefan Schropp

Stefan Schropp
Senior Regulatory Counsel
Paradigm Operations LP